118-97

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 677

PATTIE A. CLAY, APPELLANT,

vs.

LUCY C. FREEMAN AND DAVID I. FIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 11, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 677.

PATTIE A. CLAY, APPELLANT,

vs.

LUCY C. FREEMAN AND DAVID I. FIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit A—Tax receipt, March 27, 1873	33	15
November 26, 1872	34	16
March 27, 1873	35	17
November 30, 1871	36	17
June 5, 1872	37	18
April 6, 1872	38	18
January 20, 1874	39	18
April 2, 1874	40	19
February 22, 1876	41	20
December 4, 1876	42	20
January 7, 1878	43	21
January 4, 1879	44	22
December 14, 1879	44	22
Exhibit B—Transcript of record from State courts in case of Field *v.* Clay *et al*	45	23
Caption	45	23
Petition	45	23
Bond for costs	48	24
Order granting leave to answer, &c.	48	25
Answer	49	25

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Exhibit B—Order for continuance, &c.	55	28
Exceptions to answer, &c.	56	29
Order sustaining exceptions, &c.	57	29
Order appointing guardian *ad litem*	58	30
Answer of " " "	58	30
Order correcting names of parties	59	30
Decree	60	31
Petition for appeal	62	32
Order allowing appeal	63	33
Bond for appeal	62	33
Opinion of supreme court of State	65	34
Final decree of supreme court of State	69	36
Clerk's certificate	71	36
C—Deed of Brutus J. Clay, administrator, &c., to Pattie A. Field, December 20, 1869	72	37
D—Deed of Sarah Miller, to David J. and C. I. Field, February 4, 1857	76	39
E—Letter to "Dear Lucy," November 25, 1859	79	40
F—Letter of C. I. Field to "Dear Lucy," January 4, 1866	81	41
G—Copies of Notes, &c., from D. I. Field & Co., to C. J. Field, and agreement as to same	83	42
H—Record from probate court of Bolivar county	86	44
Petition of anministrator	86	44
Exhibit A—Statement of personal estate	89	45
B— " " real estate	89	46
C—Schedule of debts, &c.	91	47
Order on petition	93	48
Order of publication	94	48
Citation notices and proof of publication	95	49
Order for sale and proof " "	99	51
Notice of " " " "	104	53
Report of sale	108	55
Clerk's certificate	110	56
Record from chancery court of Bolivar county	112	57
Caption	112	57
Petition	112	57
Affidavit of W. R. Trigg	115	58
Order of publication, &c.	117	59
Answers	121	61
Decree *pro confesso*	129	64
Order appointing guardian *ad litem*	129	65
Answer of " " "	130	65
Order correcting names of parties	131	65
Decree	131	65
Petition for appeal	133	67
Order allowing appeal	134	67
Mandate from supreme court of Mississippi	134	67
Petition of Lucy C. Freeman *et ul*	136	68
Order of publication	142	70
Proof of publication	143	71
Non-resident notice	144	72
Summons	146	72

	Original.	Print.
Exhibit H—Commissioner's report	148	73
Order *pro confesso*	150	74
Order on petition	151	74
Order confirming report, &c.	153	75
Summons of commissioners, &c.	155	76
Clerk's certificate	158	77
Appearance of Lucy C. Freeman and husband	160	78
" " D. I. Field	160	78
Demurrer of Lucy C. Freeman and husband	161	79
Demurrer of David I. Field	162	79
Exceptions to bill	163	80
Order on demurrers	165	81
Interlocutory decree	165	81
Report of master	167	82
Statement of account	169	83
Answer of David I. Field	171	85
Agreement waiving reference, &c.	172	85
Final decree	173	86
Bond on appeal	174	86
Citation	176	87
Proof of service of citation	177	88
Clerk's certificate	178	88

1 United States District Court, Northern District of Mississippi.

Proceedings had in the district court of the United States for the western division of the northern district of Mississippi, begun and held for its December term, A. D. 1883, at the court-house, in Oxford, Miss., & on — day- of terms prior thereto, in the following cause:

PATTIE A. CLAY *et als.*, Complainants & Appellants,
vs.
LUCY C. FREEMAN *et als.*, Defendants. } 288.

Nugent & McWillie, of Jackson, Miss., solicitors for appellants, and Frank Johnson, of Jackson, Miss., solicitor for defendants.

2 *O. B.*

In the District Court of the United States for the Northern District of Mississippi. In Equity.

Pattie A. Clay and Brutus J. Clay, her husband, citizens of the State of Kentucky, bring this their bill against Lucy C. Freeman and C. L. Freeman, her husband, and David I. Feilds, citizens of the State of Missouri, defendants, and thereupon your orators, on information and belief, in the main, state and show unto your honor as follows: On the 11th day of September, 1859, David I. Feild departed this life in the county of Bolivar, in said district, intestate, leaving him surviving the defendant, Lucy C. Freeman, as his widow, and the defendant, David Feild, his sole heir-at-law. At the time of, and for some years prior to, his death the said David I. Feild and Christopher I. Feild, his brother, were jointly seized and possessed of a large plantation in the said county of Bolivar, commonly known and called the Content place, and containing the following lands, to wit: Lots six, seven, & eight in section four, all of section five, all fractional section twenty-one, lot five in section twenty-two, and about three hundred and fifty-one acres in section-thirteen, fourteen, and fifteen, all in township twenty-one, of range nine west. The said David I. and Christopher I. Feild were also seized and possessed of quite a large number of slaves, which were employed by them jointly in the production of crops of corn and cotton on said lands.

The said lands included in said plantation were purchased by the said David I. and Christopher I. Feild from William Kirk
3 and others for the purpose of embarking, as partners, in planting thereon, and the slaves, stock, and other personal property were purchased and placed thereon for the like purpose, and with intent that all of said real and personal estate was to be held, used, cultivated, and enjoyed by them as partners in planting. Indeed, the said David I. and Christopher I. Feild entered into, and formed with one another, an agricultural partnership for the cultivation of said lands, in pursuance and upon the faith of which the said lands and personalty were purchased and cultivated up to the death of said David I. Field. The said David I. Field had the ex-

clusive possession and management of the partnership property and business up to the date of his death. Crops of corn and cotton, for the profit, benefit, and advantage of the said partners, were grown upon said lands by the said David I. from year to year. The cotton crops were shipped by him to the cotton factors of said firm in New Orleans, and the proceeds were applied to the payment of the current expenses of the plantation and the debts contracted in and about the partnership business. In all business transactions the style of said firm of partners was David I. Feild & Co., or D. I. Feild & Co., either being used interchangeably in the business of the concern. The partnership was formed and the partnership property in the main purchased in 1855. The property purchased from William Kirk cost some forty-five thousand dollars; that from Sarah Miller, seventeen hundred seventy-one $\frac{20}{100}$ dollars; that from Leach & the Kentucky heirs, seven thousand & three hundred and
4 eighty-five $\frac{31}{100}$ dollars. The said David I. Feild, when he went to Mississippi to take charge of said partnership business, took with him in money & slaves some eighteen thousand dollars, and an equal am't was invested in said partnership by said Christopher I. Field. The amount due said Kirk & others over and above what was advanced and loaned to the firm by said Christopher I. Fields, as will be hereafter stated, was paid out of the proceeds of sale of the crops grown upon the said plantation. The total amount of the partnership property, rent & personal, including slaves, was about sixty or seventy thousand dollars, possibly more. At the time of his death said David I. Feild owed, individually, the sum of about eleven or twelve thousand dollars; this included his half of the firm debt due to the said Christopher I. Feild, as your orator believes & state-. All of his debts to other parties have been paid, and all of the firm debts, except those due to the said Christopher I. Field. The said Christopher I. Field did not, upon the death of the said David I. Field, take possession of the partnership property in virtue of his right as surviving partner, but left it to the administrator of said David I. Feild to take possession, management, and control of said property; and he did, in fact, manage and control the same up to the commencement of the late war. Under the agreement of partnership said David I. Field was to possess, manage, & control the said partnership property for the firm, and the partners were equally interested in the property & business thereof. They were equally to bear losses & expenses and were to share equally in the profits realized by the firm, but the said Christopher I. Feild, being a man of large wealth, did not have
5 the same necessity for calling upon the firm profits which existed in the case of said David I. Field. The style of the partnership, as advertised by the partners, was David I. Field & Co., or D. I. Field & Co. Prior to the 23rd day of December, 1856, the said Christopher had advanced to the said partnership, over and above all amounts received by him, seven thousand three hundred & eighty-five $\frac{31}{100}$ dollars for the payment of part of said land purchased from one Leach, and for sundry negro slaves purchased in Kentucky in the summer of 1856. And the said David I. Field, on said day, in

the name of and for the said firm, executed and delivered to the said Christopher I. Field their promissory note for said advances in the words and figures following, to wit:

$7,385\frac{31}{100}$. On or before the first day of January, 1858, the concern of David I. Feild & Co. will be owing C. I. Field the sum of seven thousand three hundred & eighty-five $\frac{31}{100}$ dollars for money advanced the concern for payment for the Leach land and cash advanced, for the purchase of negroes in K'y in the summer of 1856, & to bear six per cent. interest from maturity, or when due. This 23rd Dec'r, 1856.

D. I. FIELD & CO. [SEAL.]

The said partnership was indebted to the said Kirk, on the 20th March, 1857, for a balance due by said firm for the purchase of part of the lands included in said Content plantation, in the sum of five thousand six hundred & sixty-six $\frac{2}{3}$ dollars; and, being unable to pay the same, requested the said Christopher I. Field, for & on behalf of said firm, to pay the same, which he did, & thereupon the said David I. Field, in the name of and for the said firm, executed & delivered to the said Christopher I. Field, a memorandum note in the words & figures following:

6

The concern of David I. Field & Co. is owing to C. I. Field the sum of five thousand six hundred and sixty-six & two-thirds dollars (it being that amount advanced by him of payment to Kirk, balance on concern note due him 1st day of January last); he is to be paid six per cent. for said amount from date until paid. This 20th March, 1857.

DAVID I. FIELD & CO.

Endorsed upon said last mentioned note, in the handwriting of and signed by the said Christopher I. Field, there appears a credit in the words and figures following, to wit:

$243.50. Rec'd on the within note the sum of two hundred & forty-three $\frac{50}{100}$ dollars on settlement of articles purchased at D. I. Field's sale of personal property by C. I. Field & D. I. Field & Co., this 1st day January, 1861.

C. I. FIELD.

On the 13th day of June, 1859, on settlement between the members of said firm touching certain matters of business wholly distinct from, and independent of, the notes above mentioned, it was found indebted to the said Christopher I. Field in the further sum of one thousand three hundred & eighty-nine $\frac{89}{100}$ dollars; and on said day the said David I. Field, in the name of and for said firm, executed and delivered to said Christopher their due bill, in the words and figures following, to wit:

BOLIVER, *June 13th*, 1859.

Due C. I. Field, or order, one thousand three hundred & eighty-nine dollars $\frac{89}{100}$, for value rec'd, on settlement to this date (to this date).

7

D. I. FIELD & CO.

On the 5th day of June, 1858, the said firm was indebted to the said William Kirk in the sum of eleven hundred dollars on account the lands purchased from him by them, and being unable to pay the same the said Christopher paid off the said debt, and thereupon the said David I. Field, in the name of and for the said firm, executed and delivered to the said Christopher their certain due bill, under seal, in the words and figures following, to wit:

Due C. I. Field, or order, the sum of eleven hundred dollars, it being money this day advanced by paying to Wm. Kirk through his draft on Hewitt, Norten & Co., of New Orleans. This 5th day June, 1885.

D. I. FIELD & CO. [SEAL.]

During the spring of the year, 1859, the said lands had been overflowed by the waters of the Mississippi river to such an extent that little if any cotton crop was grown thereon during said year, and the farming operations of the partnership resulted in a heavy loss, as your orators state on information and belief.

Presently after the death of said David I. Field one E. H. Field qualified as administrator of his estate; and thereafter, on the 12th day of December, 1859, the said Christopher I. Field probated and registered his claim against said estate, to the proof of which there was annexed a memorandum in his handwriting, signed by him, in these words and figures:

David I. Feild & Co. is a firm consisting of the estate of David I. Field and C. I. Feild, partners in the Kirk plantation, known
8 as the Content place. All the within notes are joint notes of the firm to C. I. Feild, consequently one-half of the within claims is chargeable to the estate of D. I. Feild. This the 10th Dec'r, 1859.

C. I. FIELD.

Immediately after his appointment and qualification as administrator of said David I. Field, the said E. H. Field took possession of all partnership property of the said agricultural firm, consisting of said plantation, thirty slaves, or thereabouts, twenty or thirty mules, ten or twelve head of cattle, farming implements, &c., and continued in possession of the same until the commencement of the late civil war. During the year 1859, in consequence of the overflow above stated, only about one hundred and thirty bales of cotton were grown on said place. This cotton was shipped to the merchants of the said D. I. Field & Co., in New Orleans, and the net proceeds thereof were applied to the payment of the expenses of the plantation during that year, for the benefit of the defendant, Lucy C. Freeman, and other mercantile debts of said agricultural firm. On the 25th November, 1859, the said Christopher I. Field, in a letter to the defendant, Lucy C. Freeman (then Field), of that date, states the following facts in connection with the crop of cotton of that year grown on said plantation (all of which your orators aver to be true). "The present crop is a short one, say one hundred and thirty bales, and
9 David had gone to much expense, such as building new quarters and overseer's house, much ditching, deaden-

ing land, and including the money I advanced for meat, rope, &c., and the amount I advanced you in the summer, will consume all the proceeds of the crop this year." No part of the proceeds of said crop ever came into the hands of said Christopher I. Field. During the year 1860 the proceeds of sale of the cotton crop grown on said plantation for that year were appropriated to keep up the plantation, a great deal of money being spent in ditching, deadening, and making other improvements. The crop grown on said plantation during the year 1861 was destroyed by the soldiers of the Confederate States under military orders. No part of the crops of the two last-named years ever came into the hands of the said Christopher I. Field, but all of the proceeds thereof were applied to the payment of the current expenses of said plantation, and the debts of the said partnership other than those due to the said Christopher I. Field. And your orators, on information and belief, state that after the late war, the said partnership owed other debts, in addition to those due and owing to the said Christopher I. Field, which were paid, as will presently hereafter be stated. During the late war and in order to prevent the capture of the slaves of the said firm by the fleets of the United States descending the Mississippi river, the said Christopher I. Field, surviving partner, removed the said slaves to the State of Texas
10 and kept them there until the surrender, but realized nothing as the result of their labor in the State of Texas beyond what was sufficient to pay for their maintenance and support. After the surrender the former slaves of said firm were brought from the State of Texas by said Christopher I. Field, at an expense of eight hundred dollars to himself, for the purpose of cultivating the said Content plantation with them in the interest and for the benefit of said firm. Two-thirds of the said former slaves abandoned the said plantation, and the said surviving partner thereupon endeavored to rent the said Content plantation for the year 1866; but, failing in accomplishing that purpose, he formed a partnership with a former overseer, one L. C. Martin, one of the best planters in the country, for the cultivation of said plantation during the year 1866 upon the following terms, to wit: He was to give said overseer a one-third interest in the crop, letting his services and some mules, oxen, cattle, & horses, &c., go against his third of the rents; and the said Christopher I. Field, in consideration thereof, agreed to advance all the money necessary to conduct the farming operations. The proceeds of sale of the crops of that year were to be applied to the payment of the advance made on account thereof, and the balance to
11 be divided between the parties in the proportion above stated. During the said year 1866 only about two hundred and fifty acres of the cleared land on the said Content plantation were cultivated in a crop of corn and cotton. The result of the farming operations for that year was that the said surviving partner suffered a heavy loss. During the year 1867, the said plantation was leased by said surviving partner to the said Martin and on- T. I. Childress for the sum of four thousand dollars; but, the said surviving partner having died on the 18th of July, A. D. 1867, no part of the rents

of said plantation for that year ever came into his hands or possession. Brutus J. Clay was duly qualified as administrator of said Christopher I. Field in October, 1867, in the probate court of the said county of Bolivar, and continued to act as such administrator until his death, which occurred in October, 1878. Christopher I. Field, a few months before his death, succeeded E. H. Feild in the administration of the estate of D. I. Feild, deceased, and after his death, as above stated, Brutus J. Clay was duly appointed and qualified as administrator of the estate of D. I. Feild, deceased. The said E. H. & Christopher I. Field, administrators, made all proper accounts and settlements as to the receipts and disbursements on account of the estate they represented, except this that the said
Christopher I. Field died without having made any final ac-
12 count of his administration. So it was, however, no part of
the large debt due to the said Christopher I. Field by the said firm was ever paid, except the small amount of $243.50, which was the proceeds of sale of certain personality of D. I. Field, made by his administrator, E. H. Feild, and which was by the said Christopher I. Field endorsed as a credit on one of said promissory notes, as above stated.

During the year 1868 Brutus J. Clay, the administrator of said partners, collected three hundred dollars for the rent of said Content plantation during that year from J. B. Holloway, tenant in possession, the rental value of the same having been practically destroyed by the overflow of 1867, and the break in the levees protecting the same. During the year 1869 the said Brutus J. Clay, as such administrator, leased the said plantation to Clay & Holloway for one thousand dollars. A much greater sum than the aggregate of said two year's rent last above named was expended by the said Brutus J. Clay in taxes, insurance, and repairs. Shortly after his appointment and qualification as administrator of Christopher I. Field, the said Brutus J. Clay returned to the probate court of Bolivar county an inventory of the money belonging to and the debts due the estate
of said Christopher I. Field, deceased, as the law required,
13 which was filed on the 9th March, 1868, and recorded in the
books of wills & inventories of said court on pages 326 and 327. In the said inventory the said four notes probated against the estate of said D. I. Field, December 12th, 1859, amounting on the 1st January, 1860, to seventeen thousand five hundred & eighty $\frac{56}{100}$ dollars, were included as debts due by said partnership to said C. I. Field, and one-half thereof was claimed to be due the estate of said Christopher I. Field by the estate of said D. I. Field, and the said inventory so filed was approved, confirmed, and ordered to be recorded by F. G. Gamble, judge of the probate court of said county. Thereafter the said Brutus J. Clay, administrator of the estate of David I. Field, deceased, of his own motion commenced proceedings to have the interest of the said David I. Field in said Content plantation, the partnership property, sold for the payment of one-half of said prommissory notes, in pursuance, as was supposed, of the statutes in such case made and provided, exhibiting with his petition a statement of the debts due from his said intestate to the

estate of said Christopher I. Field, being one-half of said promissory notes, which, with interest to the 20th of September, 1868, amounts to $12,716.78. A schedule showing that there was no personality belonging to said estate, and another schedule showing that the only property left by said decedent was a half interest in said Content plantation, the partnership property of David
14 I. Field & Co., which was then valued at $7,910.00, were also exhibited with said petition. The said petition was in form and application to have the estate of said David I. Field declared insolvent, and the real estate belonging thereto sold for the payment of its debts. After certain proceedings had the prayer of said petition was granted by the said probate court prior to the adoption of the present constitution of this State; the said estate was declared insolvent, and a final decree was entered by the said probate court for the sale of the undivided half interest of the said David I. Field in the Content plantation for the payment of the debts due as aforesaid by said partnership to the estate of the said Christopher I. Field. In pursuance of said decree, and acting under the authority thereof, and after advertisement made, the said Brutus J. Clay, administrator, &c., on the 20th day of December, 1869, exposed the undivided half interest in and to the lands constituting said plantation, owned by said David I. Feild in his lifetime and the said Christopher J. Feild as partnership property, at public sale to the highest bidder for cash, at the court-house door of said county, within the hours prescribed by law, at which time and place, some one acting for your orator, Pattie C. Clay, then Field, sole heir-at-law of said Christopher J. Field, deceased, ap-
15 peared and bid in her name for said lands the sum of six thousand dollars. This being the highest and best bid therefor, the said undivided half interest was struck off and sold to her for said sum of money; and, after the payment of cost out of the same, the said administrator accepted a receipt of some one acting in her behalf for the balance, she being under age, and the estate of her said father not being at all indebted. This balance of purchase-money was credited on said note. In the decree of the said probate court the said administrator was not required to give any bond for the application of the purchase-money of said lands, and if that be an irregularity in the mere form of the proceedings for the sale of said lands, it was the only one, so far as your orators are informed, believe, and state.

At the time of the sale of said lands, however, the probate court of the said county of Bolivar had ceased to exist, the constitution of the State of Mississippi having been adopted on the 1st day of December, 1869. Notwithstanding this fact, the said administrator made report to the said probate court of the county of Bolivar of the sale of said lands, but, so far as the record shows, the sale never was confirmed. The deed, however, was delivered to your orator, Pattie C. Clay, and she was placed in possession of the whole of the said Content plantation, after she obtained
16 her majority. By section 3 of the schedule annexed to the said constitution adopted on 1st December, 1869, it was or-

dained that the Legislature should provide for the removal of causes then pending in the courts of this State to courts created by or under said constitution; and by section 25 of an act of the Legislature of Mississippi, approved May 4th, 1870, entitled "An act in relation to chancery courts," it was enacted that all causes and proceedings remaining undisposed of in the chancery or court of probates of each county should be transferred to the chancery court of the county, which court should proceed to hear and determine the same according to the principles of law and equity applicable thereto; but no steps were ever taken to have said proceedings for the sale of said land transferred, nor were the same ever transferred to the chancery court of said county of Bolivar; and the said administrator seems to have proceeded upon the idea that the probate court of said county properly had jurisdiction of the cause and continued to exist after the adoption of the said constitution. The sale was made in good faith, and the said administrator and your orator both acted in the honest belief that the sale was well warranted by law, and while no purchase-money beyond the costs was paid, your oratrix afterwards gave the said
17 administrator a receipt for the balance of purchase-money, to be applied as a credit on the said promisory notes held by her as heir-at-law of her deceased father. Your orators therefore submit to this honorable court whether the statute of limitations of one year from and after the first day of October, 1871, as prescribed by section 2173 of the code of 1871, be applicable to this case, though they are advised it affords them no protection. Your orators, having come into possession of said Content plantation under the sale hereinbefore mentioned, leased the same for the year 1870 to Clay & Holloway for the sum of one thousand dollars. They leased the same during the year 1871 to one Stephenson, who abandoned the place, and your orators were compelled to cultivate it, and did cultivate it during that year, making forty-one bales of cotton. They expended during said year for repairs on old cabins and dwellings, building of two new houses and six chimneys, $929.80, and for driven wells and pumps, $77.00. The cost of making the crop of cotton during said year exceeded the proceeds of sale thereof, and the net loss suffered by your orators equalled the cost of the improvements put upon said place. There was expended for ditching on said plantation during the year 1869 and 1870 the sum of $1,640.00, and for taxes about the sum of $1,400.00. The plantation was
18 overflowed during the year 1871, 1874, and 1876. In consequence of the overflow of 1871 the tenant in possession of said place became insolvent, and was forced to abandon it. The overflows of 1874 and 1876 were extremely disastrous. There were originally about four hundred and fifty acres of cleared land on said place, but about sixty five acres of the same had grown up during the war, and were not cultivated afterwards. During the year 1872 your orators leased said plantation to E. Field Miller for $1,250 rent, and expensed for improvements & taxes $1,179.50. During the year 1873 they leased the same to the said Miller for $1,250, and expensed for improvements and taxes $793.57. In 1874 the said

plantation was overflowed; could not be rented, and was leased for the taxes. In 1875 your orators leased said plantation for $1,250, and expended for improvements $2,028. During the year 1876 the said plantation was overflowed, and yielded no income whatever to your orators. On the contrary, they expended in repairing the damages caused by the overflow $621.85. During the year 1877 they leased said plantation for $1,350, and expended for taxes $335.00. During the year 1878 they leased said plantation for $1,350, and expended for taxes $352.72. During the year 1879 they leased said plantation for $1,350, and expended for taxes and improvements $631.81.

19 During the year- 1880 and 1881 your orators collected in rents from said plantation $850, and expended for improvements & taxes $435.23. They are still in possession of said plantation, but in consequence of the destructive overflow of the present year they will realize nothing therefrom in the shape of rents, and will be subjected to quite a large expenditure of money to keep the buildings and fencing on said plantation in a proper state of repairs and to pay the taxes accruing thereon. The defendant, David I. Feild, has recently come of age, and on the 27th November, 1880, instituted his action of ejectment in this honorable court against your orators for the recovery of the undivided half interest in the lands constituting the said Content plantation, descended to him from his father, David I. Feilds, deceased, as he claims. On the 1st December, 1880, your orators filed their plea in said suit, and the same is now pending in this honorable court. In said suit the said David I. Field demands $20,000 for the use and occupation of said lands from and including the year 1870. Shortly after the death of her husband, to wit, in the year 1859, the said Lucy C. Freeman, with her said son David left the State of Mississippi and took up her residence in the State of Kentucky, whether

20 permanently or otherwise your orators do not know, but so it is the said Lucy C. Freemen and her said son, from the year 1859, have been continuously out of the State of Mississippi. They have been absent from and have resided out of the State ever since that time, or if they have ever been in the State of Mississippi since that year their presence was transitory, and they did not return to the said State for the purpose of remaining therein. Indeed, on the — day of ——, 18—, the said Lucy C. Freeman intermarried with the defendant, C. L. Freeman, and is now living with him in the State of Missouri. On the 12th day of April, 1873, the said Lucy C. Freeman, then Field, filed her petition for dower in the lands constituting the said Content plantation against Brutus J. Clay, Sr., administrator of the estate of Christopher I. and David I. Feild, deceased, your orators, and the defendant, David I. Field. Such proceedings were thereupon had that, on the 19th day of January, 1875, a decree for the allotment of dower in accordance with the prayer of said petition was rendered by the chancery court of Bolivar county, in which said petition had been filed. On the 20th January, 1875, your orators & the said Brutus J. Clay, Sr., administrator of Christopher I. Feild, prayed for and obtained an appeal from said final decree to the supreme court of this State, and on the 29th

. day of May, 1876, the final decree of the said chancery court, in
21 so far as it establishes the right of dower of said Lucy C. Freeman, was affirmed. On the 12th day of November, 1879, her dower in said lands was allotted to her, and she was placed in possession thereof, and this allotment of dower was confirmed by said chancery court. In their answer to the petition for dower, filed as aforesaid by the said Lucy C. Freeman, your orators set up the partnership contracts and debts hereinbefore referred to, and claimed that she was not entitled to dower therein, but that the said lands were bound and liable primarily, to the exclusion of the dower claim, for the payment of the said partnership debts.

So much of their answer as set up this defence was excepted to as constituting no bar to the right of dower, and said exception was sustained by said chancery court. The supreme court of this State, in affirming the said decree, held that you orators' right arising out of the said partnership and the said partnership debts was not affected by the said proceeding for dower, and that they were left free to litigate the same with the said Lucy C. Freeman. Your orator, Brutus J. Clay, Jr., suffered and permitted the said Lucy C. Freeman to take possession of the dower so allotted to her, in the expectation, hope, and belief that she would be content therewith; but now so it is, contriving and intending still further to vex, harass, and injure your orators, she did, on the 30th of September, 1880, exhibit in
22 the said chancery court of Boliver county her bill against your orators for some $6,500, the amount claimed to be due and owing to her for the rental value of her dower interest in said lands prior to the allotment thereof. The said suit has been transferred from the said chancery court to this honorable court by your orators, answer has been filed, and proof has been taken in said suit, as well as in said ejectment suit, by David I. Field, and the same stands now ready for trial, so that your orators are impleaded in this honorable court as well by the sole heir-at-law as by the widow of said David I. Field touching the right of property and rents of said plantation thus claimed by two different parties. They are greatly harassed and are put to considerable loss and expenses because of the pendency of said two suits. Your orator, Pattie A. Clay, attained her majority on the 22nd day of November, 1869, and married your orator, Brutus J. Clay, Jr., on the 20th day of February, 1872. Your orator, Pettie A. Clay, was not a party to the probate court proceeding for the sale of said half interest in said lands of the said David I. Field, deceased, for the payment of the said debts due to Christopher I. Field, her father, nor was she present or a bidder in person at the sale thereof made by the said Brutus J. Clay, administrator. The lands were bid in at said sale for her by the attorneys representing said administrator, as your orators are informed and believe. The schedule of debts exhibited by said administrator as being due from the estate of David I. Field showed on its face that the said debt was due by the said
23 firm of David I. Field & Co., or D. I. Field & Co., to Christopher I. Field, and that the property sought to be sold

for payment thereof was partnership property of said David I. Field & Co., or D. I. Field & Co.; indeed, the memorandum attached by C. I. Field to the proof of the said debt distinctly declares that the makers of said note *was* a firm consisting of the said David I. Field and Christopher I. Field, who, as partners, owned & cultivated the said Content plantation, and that the said notes were the joint notes of the firm. Your orators therefore, on advice of counsel, say that the said probate court of said county of Bolivar had no jurisdiction whatever to wind up, settle, or adjust the partnership of the said David I. Field & Co., or to sell the property of said firm for the payment of the debts of the partnership. They state further, on like advice, that the final decree of said probate court was void for like reason and because your orator was not made party thereto, nor could nor did she waive any right held by her growing out of the existence of the partnership above mentioned. They further state, on like advice, that the sale of said land under the said probate court decree was utterly null and void, because the said court had no jurisdiction of the proceeding and because prior to that time, or the time of said sale, the probate court of said county had ceased to exist. Nevertheless your orators state and charge the law to be that the said lands are bound and liable, as partnership property, for the payment of the said
24 promissory notes hereinbefore set out upon a fair accounting had for that purpose; or if not so, and your orators are held estopped by the proceeding had in said probate court of said county of Bolivar to proceed against said land as partnership property, and are confined to a proceeding against the undivided half interest therein of said David I. Feild, deceased, because of such supposed waiver or election; they are advised, believe, and charge the law to be, that they are entitled to have the said undivided half interest sold under the said judgment and decree of the said probate court, or at least for the amount — bill therefor by your oratrix, on the 20th day of December, 1869, through her represenative, to wit, the sum of six thousand dollars, with interest thereon at six per cent. per annum from that date, and that your orators are to account to and with the defendant of and concerning the rents, gains, and profits arising out of said lands on the one side, and the amount — expenses by them in taxes, insurance, and repairs on the other. Shortly after the sale of the undivided half interest of said D. I. Field in said plantation, Brutus J. Clay, Sr., administrator of his estate and of the estate of Christopher I. Field, made his final settlement in the chancery court of Bolivar county and was discharged from the further execution of his trust. There has since been no administrator, nor is there now any administor of either of said estates. D. H. Feild, as administrator of David I. Feild, deceased, rendered a full, true, and just account of all his acts and doings as such administrator and was discharged. Christ-
25 topher I. Field, as administrator of the estate of said David I. Field, deceased, for the few months he acted as such, received and disbursed nothing on account of said

estate. All of the personalty belonging to the partnership of David I. Field & Co. was lost, dissipated, or destroyed without any negligence on the part of the said Christopher I. Field, surviving partner, during and as the result of the late civil war, at the end of which war the only property possessed by the said partnership were the lands constituting the said Content plantation. No part of the promissory notes or due bills executed by the said David I. Field, for and in the name of the said firm, to the said Christopher I. Field, as above stated, has ever been paid or discharged except the sum of two hundred & forty-three $\frac{5}{100}$ dollars on 1st January, 1861, as above stated. Neither in the probate court proceedings for the sale of the interest of said David I. Field in said Content plantation, instituted as above stated by said Brutus J. Clay, Sr., administrator, nor in any other way has your oratrix waived or intended to waive her right to subject the partnership property to the payment of the amount due on said promissory notes, though she was willing and would have continued to be willing to let matters stand as they were but for the vexatious and unrighteous suit brought against her as above stated. During the years of her occupancy, from the year 1870 up to the present time, your oratrix has realized no profit, benefit, or advantage from the said Content plantation; on the contrary thereof the net loss suffered by her because of such occupation up to
26 the first day of January, 1883, will be not less than $2,500.00 or $3,000.00. Your oratrix herewith files sundry tax receipts from the year 1872 to 1879, inclusive, as Exhibit "A," and prays that the same may be considered as a part of this bill. She also files a partial transcript of the record in the case of the said Lucy C. Freeman against the said Brutus J. Clay, Sr., & others marked Exhibit B to this bill, and prays that the same may be considered a part thereof. She also files as Exhibit C to this bill a copy of the deed made by Brutus J. Clay, as administrator of David I. Field, to your oratrix, and prays that the same may be considered as a part hereof. She also files as Exhibit D to this bill deed from Sarah Miller to David I. Field & C. I. Field, dated February 4th, 1857, and prays that the same may be considered as a part of this bill. She also files as Exhibit E & F two letters from C. I. Field to the defendant, Lucy C. Freeman, which were filed by her as proof in her said cause pending in this court against your orators, and pray that the same may be considered as a part of this bill. Your orators also make parts of this proceeding all the proof heretofore taken in the said two causes pending in this court against your orators, and pray that the same may be considered as if regularly taken as a part of the proof in this cause. They also file herewith copies of the said notes and due bills hereinbefore mention- and a memorandum of the probate thereof, marked Exhibit G, and prays that they be taken and held as a part of this bill.

27 The public records of the said county of Bolivar have been partly lost or destroyed by fire, and the record of the proceedings had in the matter of the estate of David I. Field, deceased, including the petition of said Brutus J. Clay, Sr., administrator, for

the sale of the undivided half interest in the lands constituting said Content plantation, is greatly defective, most of the same having been destroyed by fire. What of said records remains is herewith filed, marked Exhibit H, and prayed to be taken as part of this bill. If it should be held that your orator is bound by said proceedings she is advised that the decree of the probate court of Bolivar county stands to this day as the unexecuted decree of this court, kept alive and open by reason of the report of sale under the same which has not been acted upon, and that the same can now, in this proceeding, be enforced should the same be found necessary in the interest of justice. The destruction of the personal property of said agricultural firm and emancipation of the slaves thereof during the late war added to the depreciation in value of the real estate in said county of Bolivar, and the destructive effects of the several overflows of said plantation, happening during and since said war, has rendered the estate of said David I. Field, in fact and in truth, wholly insolvent. Indeed, said plantation is not now — with the debt due your orator. Your orators have now no copy of the partnership agreement between the said Christopher I and David I. Field. The copy in their possession, with the
28 original notes and due bills referred to, were sent by your orators to their attorneys, Mess. Clark and Montgomery, at Floryville, in the county of Bolivar, to be used in the proceeding- instituted by said Lucy C. Freeman for the allotment of her dower; and the notes, due bills, & contract of partnership were lost or mislaid by the said Clark & Montgomery, and cannot now, after diligent search, be found. The copy of said notes and due bills, herewith filed as Exhibit G, was prepared by W. E. Montgomery, Esq., of said firm of Clark & Montgomery, and is a true copy of the same. There are no persons interested in the subject-matter of this controversy, except your orators and defendants. The said Christopher I. Field at the time of his death owed nothing, or if he was indebted his liabilities were wholly paid off and discharged shortly after his death. All of the separate debts of said David I. Field existing at the time of his death have been likewise paid off and discharged. All of the partnership debts of the said David I. Field & Co. existing at the death of said David I., except the debts due as aforesaid to the said Christopher I. Field, have been paid off and discharged. The only debts of the said firm not paid off and discharged are the debts due to the said Christopher I. Field, and now held by your oratrix as his sole heir-at-law and distributee. The premises considered, your orators, hereby waiving an answer under oath, except as to the interrogatories hereto appended, pray
29 that the said Lucy C. and C. L. Freeman and the said David I. Field be made defendants hereto and compelled to answer the several allegations of this bill; that process of subpœnas herein issue against them to be executed upon their attorneys of record; that a receiver be appointed to take possession of the said Content plantation, and lease the same from year to year until the final hearing of this cause, entering into such bond as this honorable court

shall determine, making report from time to time as the court may direct; and — orators, here now offering to account to this honorable court for all rents and profits received and all expenditures and taxes and repairs made on account of said partnership property, pray that the assets of said partnership, including the said plantation, be marshalled and sold for such balance as may be found due to your oratrix upon a fair accounting had, as well about the profits, expenses, taxes, and repairs as about the partnership debts due to her ancestors heretofore set out in this bill; or if this honorable court should adjudge and determine that the said proceedings in the probate court of said county of Bolivar constitute an election binding upon her, and that they estop her from proceeding otherwise than as against the undivided half interest of said David I. Field, deceased, in said plantation for the half of said partnership debts due to her ancestors, your orators in that event pray that after
30 the amount due her as such heir-at-law and distributee upon such accounting shall be ascertained and fixed, the said undivided half interest of said David I. Field in said plantation shall be sold under the proper decree of this court, thus carrying into execution the decree of said probate court of Bolivar county rendered in the matter of the administration of the estate of said David I. Field, deceased; but if this honorable court should adjudge and determine that your orators are not entitled to either of the special reliefs herein before prayed, they then pray that this honorable court may decree that your orators have a lien upon the said undivided half interest of said David I. Field, deceased, in said plantation for the said sum of six thousand dollars, and the interest thereon from the 20th day of December, 1869, lessened by any balance that may be found due by her upon such accounting to be had in the cause as may be adjudged to be fair and equitable; and if it be determined that your oratrix has lost her right to proceed against said plantation, as assets of said partnership for the payment of said partnership debts to her said ancestor, they pray that an accounting may be had between them and the said Lucy C. Freeman in connection with her claim as propounded in and by her bill of complaint upon such principles and in such manner as this honorable court shall adjudge to be fair
31 and equitable; or, if mistaken in the relief sought, then for such other further and general relief and decree as to equity belongs and your orators can require. In the meantime your orators, hereby confessing they are without valid title to the undivided half interest of said David I. Feild in said plantation, but claiming and insisting that in no event can they be held to account to said defendants in two separate proceedings concerning the rents of said plantation, and that the whole controversy between them and said defendants, their agents and attorneys, be enjoined, inhibited, and restrained from further prosecuting their said suits in this honorable court against your orators, and on final hearing that said injunction be perpetuated, may it please your honor to grant your orators the writ of

spec., directed, &c., commanding, &c., and that the defendants answer the annexed interrogatories under oath.

And, in duty bound, &c., they will ever pray, &c.

BRUTUS J. CLAY.
PATTIE A. CLAY.
NUGENT & McWILLIE,
Sol's for Compl'ts.

THE STATE OF KENTUCKY, *County of Madison:*

Personally appeared before me, the undersigned, notary public in and for the State and county aforesaid, the above-named Pattie A. Clay & Brutus J. Clay, who, being duly sworn, depose & says
32 that the matter & *and* things stated in the foregoing bill as of their own knowledge are true, and those stated on information and belief they verily believe to be true.

____ ____.
____ ____.

Sworn to & subscribed before me this 17 day of July, A. D. 1882.
ROB'T R. BARNUM,
Notary Public.

1. Let the defendants answer under oath where her late husband, David I. Feild, deceased, first went to the State of Mississippi to live, and when, first, he began to cultivate the Content plantation in partnership with his brother, Christopher I. Feild, deceased; when he died, when David I. Feild, Jr., attained his majority, and when defendant, Lucy C., intermarried with defendant, C. L. Freeman.

2. Let them answer and state when defendant-, Lucy C. Freeman & David I. Feild, left the State of Mississippi after the death of said David I. Feild, where they went, and where they have lived and been bodily present during each of the years following the year 1859, and where they now live.

3. Let them answer & state how many slaves the said David I. Feild, deceased, carried with him from Kentucky to Mississippi when he embarked in the cultivation of said Content plantation with his brother.

NUGENT & McWILLIE, *P. A.*

33 Following is Exhibit A, as referred to in the foregoing bill:

Ex. "A" to Bill.

FLORYVILLE, MISS., *M'ch* 27, 1873.

Received of Mrs. Pattie A. Clay, by E. T. Miller, the sum of one hundred and fifty-eight dollars, being am't of levee tax of ten cents per acre due the board of levee commissioners for the counties of

Bolivar, Washington, & Issquena for the fiscal year 1872 on the following lands to wit:

Parts of section.	Sec.	Town.	Range.	Acres.	Tax.
All	5	21	9	700	$\frac{31}{100}$
Lots 6, 7, & 8	4	"	"	237	$\frac{46}{100}$
All E. Berryman's Lake	13	"	"		
" " " "	14	"	"		
And all E. Berryman's Lake, in lot-1 & 2	15	"	"	351	$\frac{13}{100}$
Frac'l	21	"	"	135	$\frac{70}{100}$
Lot 5	22	"	"	157	$\frac{40}{100}$
				1,580	$158 00

H. T. FLOREY,
Collector Bolivar County.

34

SHERIFF OFFICE,
BOLIVAR CO., MISS., *November* 26, 1872.

Rec'd of Mrs. Pattie Clay, per Miller, $206 46, State & county tax — fiscal year 1872, as per following statements & descriptions of real estate, to wit:

		Division of section.	S.	T.	Range.
State	50 96	Lots 6, 7, & 8			
County	12 74	238 acres	4	21	9
Bridge	6 37	All frac'l			
C. H. & J.	25 48	136 acres	21	"	"
Sp'l C. & J.	25 48	Lot 5			
School	25 48	See map, 157 acres	22	"	"
C. levee	59 95	117 acres in	14	"	"
Total	$206 46				

B. K. BRUCE,
Sheriff & Tax Coll., Bolivar Co.

35

SHERIFF'S OFFICE,
BOLIVAR COUNTY, MISS., *March* 27, 1873.

Rec'd of Mrs. Pattie A. Clay, p'r Miller, $79.00, 5 cent levee tax, fiscal year 1872, as per following statements & descriptions of real estate, to wit:

Division of Section.	S.	T.	R.
All	5	21	9
Lots 6, 7, & 8	4	"	"
All E. Berryman Lake	13	"	"
" " "	14	"	"
" " in lots 1 & 2	15	"	"
Fractions	21	"	"
Lots, 5	22	"	"

(1,580 acres.)

B. K. BRUCE,
Sheriff & Tax Col. Bolivar County.
By L. VINE, *D. S.*

36

SHERIFF'S OFFICE,
BOLIVAR CO., MISS., *Nov. 30th*, 1871.

Rec'd of D. I. Feild $102.56 (by E. F. Miller), State & county tax fiscal year 1871, as per following statements & descriptions of real estate, to wit:

		Division of section.	S.	T.	R.
State	$2,932	Lots 6, 7, & 8	4	21	9
County	2,932	All tract	21	"	"
S. River	2,932	Lot 5	22	"	"
Poor	1,466	117 acres in	14	"	"
		Lots 1, 13, & 14	15	"	"
Total	$102.56				

12.35 paid by draft; the receipt to be good if draft paid.

P. B. STARKE,
Sheriff & Tax Coll. Bol. Co.

37 SHERIFF'S OFFICE,
BOLIVAR CO., MISS., *June 5th*, 1872.

Rec'd of D. I. Feild, by E. F. Miller, $21.99, State & county tax, fiscal year, 187-, as per following statements and description of real estate, to wit:

Lots 6, 7, & 8	4	21	9
All frac'l	21	"	"
Lot 5	22	"	"
117 acres in	14	"	"
Lots 1, 13, & 14	15	"	"

School tax, $21,99.

B. K. BRUCE,
Sheriff & Tax Col., Bolivar County.

38 BEULAH, MISS., *April 6th*, 1872.

Rec'd of D. J. Feild, per G. Clay, the sum of — dollars, being the amount of the levee tax of 10 cents per acre due the Board of Levee Commissioners for the counties of Bolivar, Washington, & Issuquena (for the fiscal year, 1871) on the following lands, to wit:

Lots 6, 7, & 8;	4,	21,	9, 238	$23 80
All	5,	"	" 700	70 00
All fract'l	21,	"	" 136	13 60
Lots 5,	22,	"	" 157	15 70
351 acres in sec-.	13,	14, &	15, 351	35 10
				$158 20

H. F. FLOREY.

Redeemed by Miss Pattie A. Clay the following lands forfeited to State of Miss. for non-payment of the taxes due and unpaid thereon for the fiscal year, 1871, to wit:

Lots, 1, 2, 3, 4, 5, 6, 7, & 8; 5, 21, 9; 700.

State tax, 1871	33 60	
County tax "	33 60	
Spec'l " "	33 60	
Pauper	16 80	
School	25 20	
	$142 80	
Interest	10 71	
		153 51
39 State tax, 1872	71 40	
C. H. & J., "	35 70	
S. C. H. & J. & N	35 70	
School	35 70	
Co	17 85	
Bridge	8 93	
		205 28
Int		20 52
		225 80

Legal sub'dies	80
5% com. to cl'rk	11 25
Cost redemption & cancellation	1 25
	$392 61

Rec'd payment this 26th day of March, 1873.

H. T. FLOREY, *Clerk*,
By E. GOWAN, *D. C.*

SHERIFF'S OFFICE,
BOLIVAR COUNTY, MISS., *Jan'y 20th*, 1874.

Rec'd of Mrs. Pattie Clay, per Miller, State, county, & teacher's fund taxes for the fiscal year 1873, as per following statements & descriptions of real and personal property, to wit:

All		5	21	9
Lots 6, 7, & 8		4	"	"
All E. Berrylake, 352 acres		13	"	"
" " " "		14	"	"
Lots 1 & 2		15	"	"
	All fra'l	21	"	"
40	Lot 5	22	21	9

State tax	148 03
County	74 61
C. H. & J	74 02
Prisoners	37 01
Def. teachers	49 34
Bridge	29 61
W. & S. H	29 60
Teachers' fund	69 70
C. levee	34 85
5 per cent. levee	79 20
Total	$625 37

B. K. BRUCE,
Sheriff & Tax Coll.

SHERIFF'S OFFICE,
BOLIVAR CO., MISS., *April* 2, 1874.

Rec'd of Mrs. Pattie Clay $168.20, 10 cent levee taxes for the fiscal year 1873, as per following statements and description of real & personal property, to wit:

All frac'l, 5, 21, 9; lots 6, 7, & 8, 4, 21, 9.
All E. Berrylake, 13, 21, 9; " 1 & 2, 15, 21, 9.
" " " " 14, 21, 9; all frac'l, 21, 21, 9.
Lot 5, 22, 21, 9.
1,682 acres.

B. K. BRUCE,
Sheriff & Tax Coll.

41 SHERIFF'S OFFICE, BOLIVAR COUNTY, MISS.,
FLOREYVILLE, *February* 22, 1876.

Rec'd of Mrs. Pattie Clay (per Miller) $637.69, State, county, teachers' fund, and levee taxes, for the fiscal year 1875, as per following statements and descriptions of real & personal property, to wit:

All	5, 21, 9, acres	701
Lots 6, 7, & 8,	4, 21, 9, "	364
All E. B. Lake,	13, 21, 9, "	83
" " " "	14, 21, 9, "	269
Lots 1 & 2,	15, 21, 9, "	90
All fract.	21, 21, 9, "	136
		1,643

State tax	91 99
" teachers	25 39
County	11 50
" judiciary	23 00
Schoolhouse	11 50
Jail	13 80
Defict teacher	23 00
Bonds & int.	50 60
Special mand's	32 20
Constructing levee	190 41
Liquidating levee	82 15
5-cent levee	82 15
	$637 69

J. E. OUSLEY,
Sheriff & Tax Col.,
By WM. R. CAMPBELL, *D. S.*

42 SHERIFF'S OFFICE,
ROSEDALE, MISS., *Dec.* 4, 1876.

Rece'd of Mrs. Pattie Clay, per Miller, $621.85, State, county, & levee taxes, for fiscal year 1876, as per following description of real estate and personal property, to wit:

All frac.	5, 21, 9, acres	701
Lots 6, 7, & 8,	4, " " "	364
In all E. Bear. Lake,	13, " " "	83
Do.	14, " " "	269
Lot- 1 & 2,	15, " "	90
All frac.	21, " "	136
Total		1,646

State tax	$79 79
Sp'l bridge	7 98
S. house	3 99

Myer's mand.	11 97
Rep. C. H. & J.	11 97
Jail	19 95
Bonds & int.	19 95
Pauper	9 98
Comm. county	23 94
Taylor bridge	27 93
County judiciary	35 91
Const. levee	184 19
5-c. levee	82 15
Liq. levee	82 15
Total land	$621 85

J. E. OUSLEY,
Sh'r'ff & T. Col.,
By WM. R. CAMPBELL,
D. S. & Tax Col.

43

SHERIFF'S OFFICE,
ROSEDALE, MISS., *Jan'y* 7, 1878.

Rec'd of Mrs. Pattie Clay, $335.01, State, county, and levee taxes for fiscal year 1877, as per following description of real estate & personal property, to wit:

Lots 6, 7, & 8,	4,	21,	9,	acres	364
In all East Bearman's Lake,	13,	"	"	"	83
Do. do.,	14,	"	"	"	269
Lots 1 & 2,	15,	"	"	"	90
All fract.,	21,	"	"	"	136
"	5,	"	"	"	701
					1,643

State tax	63 47
County "	95 21
Bonds & int. tax	55 87
Special prisoners'	15 87
Deficit teachers'	7 94
" scrip	7 94
Levee mandamus	5 48
5-ct. levee	82 15
2½ "	41 08
Total land	$335 01

J. E. OUSLEY,
Sheriff & Tax Col.,
By A. W. CORVIS,
D. S. & Tax Col.

44

SHERIFF'S OFFICE,
ROSEDALE, MISS., *Jan'y* 4, '79.

Rec'd of Mrs. Pattie Clay 302.72, State, county, & levee taxes for fiscal year 1878, as per following descriptions of real estate & personal property, to wit:

Lots 6 & 7 & 8,	4, 21, 9, acres	364
Int. in all East Bearman Lake,	13, 21, 9, "	83
" " " "	14, 21, 9, "	269
Lots 1 & 2,	15, 21, 9, "	90
All frac.,	21, " "	136
"	5, " "	701
		1,643

State tax	$40 32
Deficit scrip	10 16
Mandamus	5 50
5-ct. levee	82 55
General county tax	60 48
Bonds & int	60 48
Const. levee	52 55
2½-ct. levee	41 08
Total	$302 72

R. M. WILSON,
Sheriff & Tax Col'r.

SHERIFF'S OFFICE,
ROSEDALE, MISS., *Dec.* 14, 1879.

Rece'd of Mrs. Pattie Clay (per Miller) $428.23, State, county, & levee taxes for fiscal year 1879, as per following descriptions of real estate & personal property, to wit:

Lots 6, 7, & 8,	4, 21, 9	364
Int. in East Bearman Lake,	13, 21, 9	83
" " "	14, 21, 9	269
Lots 1 & 2,	15, 21, 9	90
All frac.,	21, 21, 9	136
All fract.,	5, 21, 9	701
Acres		1,643

State tax	$40 32
Special bridge	40 32
Const. levee	57 60
5-ct. levee	82 15
General county	120 96
Bonds & int.	40 32

E. bank mand.	5 48
2½-ct. levee	41 08
Total	$428 23

O. L. JONES,
Sheriff & Tax Col.

Filed Aug. 10th, 1882.

G. H. HILL, *Clerk.*

45 Following is Exhibit B to bill:

Ex. B to Bill.

STATE OF MISSISSIPPI, *Boliver County:*

Pleas at a chancery court begun and held for said county, at the court-house, in the town of Floryville, on the third Monday of January, A. D. 1875, before his honor, E. Stafford, chancellor of the 15th chancery district in the State of Mississippi, in the following-named cause, viz:

Petition for Dower.

LUCY C. FEILD
vs.
BRUTUS J. CLAY *et al.* } No. 312.

Be it remembered that heretofore, to, wit, on the 19th day of January, 1875, being a day in said term, came on to heard the above-entitled cause on petition, answers, exhibits, and proofs, the papers and proceedings of which are in these words & figures following, to wit:

STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FEILD, Complainant,
vs.
BRUTUS C. CLAY Sr., Adm'r of C. J. Feild, Dec'd; of David J. Feild, Dec'd; Brutus J. Clay, Jr., Pattie A. Clay, David J. Feild, Minor, & John W. Scott, G'd'n, Defendants. } In Chancery. April Term, 1875.

46 To the Honorable E. Stafford, chancellor of the 15th chancery district of the State of Mississippi and sole — presiding therein, sitting in chancery for the county of Bolivar, at the April term, 1873, thereof:

The petition of Lucy C. Feild, of the county of Fayette and State of Kentucky, would respectfully show unty your honor that on the — day of May, 1855, she intermarried with one David J. Feilds, now deceased, and that the said David J. Feilds departed this life on the 11th day of September, 1859, leaving as his only heir at law, him surv-ing, your petitioner and the defendant, David J. Feilds, his only child. She would further show that at the time of

his death he was seized and possessed, in addition to a considerable personal estate, of an undivided one-half interest in the following lands situate, lying, and being in the county of Bolivar & State of of Mississippi, to wit: The undivided one-half of lots six, seven, & eight, in section four, all of section (5) five, all — fractional section (21) twenty-one, lot (5) five, in section (22) twenty-two, about (351) three hundred & fifty-one acres, in sections (13) thirteen, (14) fourteen, & (15) fifteen, all in township (21) twenty-one, range (9) nine west; that the other undivided one-half interest belonged to C. J. Feilds, his brother, now deceased, who left him surv-ing Pattie A. Clay, wife of the defendant, Brutus J. Clay, Jr. Your petitioner would further show unto your honor that John W. Scott is the guardian of David J. Feilds, minor, & that Brutus J. Clay is the legally appointed administrator of the estate of both C. J. Feilds & David J. Feilds, dec'd. Your petitioner is informed, believes, and so
47 beli-ving, charges that she, as the widow of Daniel J. Field, deceased, is entitled to an undivided one-half interest of said lands so held and owned by her husband at the time of his death after the payment of his debts. She would further show unto your honor that she is informed, believes, and, so believing, charges that all of the just and legal debts due by her deceased husband have been fully paid off and discharged, and that the lands hereinbefore described remain free from all incumbrances & of right descend to his legal heirs and to her as his widow; she would show that the administrator of said estate received far more in money than was necessary to pay off all of said debts; she would state to your honor that Brutus J. Clay, Sr., adm'r of the estate of both D. J. & C. J. Fields, received at one — in the month of August, 1867, the sum of four thousand seven hundred and twenty-nine $\frac{76}{100}$ dollars, which was far more than sufficient to pay all amounts due from the estate of D. J. Fields to any or all of his creditors. Your petitioner therefore prays that a subpœna or citation may issue herein, requiring the said Brutus J. Clay, Sr., adm'r of the estate of both C. J. & David J. Fields, dec'd, Brutus J. Clay, Jr., and Pattie A. Clay, his wife, Jno. W. Scott, g'd'n, & David J. Fields to be & appear before your honorable court at the next April term thereof and show cause why, if any they can, that her petition for dower in the real estate of David J. Fields, dec'd, should not be granted, and if mistaken in relief sought, she would pray for general and equitable relief in the
48 premises; and, as in duty bound, she will ever pray, &c.

TRIGG & BUCKNER,
Sol's for Petitioner.

Endorsed: Filed April 12, 1873. H. T. Florey, clerk, by E. Gorden, D. C.

And on the same day, viz., April 12th, 1873, was filed a bond for cost, in the words & figures following, to wit:

THE STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FIELD
vs.
BRUTUS J. CLAY, SR., *et al.* } In Chancery. April Term, 1873.

Know all men by these presents that we are held and firmly bound unto H. T. Florey, clerk of the chancery court of the county and State aforesaid, for all sums which may be adjudged against Lucy C. Fields as costs in the above-entitled cause. Given under my hand and seal this 8th day of April, 1873.

TRIGG & BUCKNER. [SEAL.]

And afterwards, viz., Oct. 22nd, 1873, an order was made herein, in the words & figures following, to wit:

LUCY C. FIELDS
vs.
BRUTUS J. CLAY *et al.* } No. 312.

Leave given to defts to answer within sixty days as of this term, & cause continued.

And afterwards, viz., January 20th, 1874, the answer of B. J. & Pattie Clay was filed herein, in the words & figures following, to wit:

49 *Answer of B. J. & Pattie Clay.*

In Chancery Court of Bolivar County, Mississippi.

BRUTUS J. CAY, Adm'r, & Others *ads.* LUCY C. FIELDS & Others.

The answer of Brutus J. Clay, Sr., Administrator, &c., Brutus J. Clay, Jr., and Pattie A. Clay, three of the defendants, to the petition of the said Lucy C. Fields for dower.

These defendants, answering, admit that the said Lucy intermarried with the said David I. Fields, now deceased, that *that* said David died about the date in the said petition mentioned; that said Lucy is the widow of the said decedent, but they deny that she is one of his heirs-at-law, and they say David I. Feild, a minor son of the said decedent, is his sole heir at law. They deny that said decedent died seized & possessed, in addition to a considerable personal estate, of one-half interest in the lands in said petition mentioned & set forth, otherwise than as hereinafter mentioned, or having any other interest than as hereinafter stated. They state that some years before the death of said decedent he & his brother, Christopher I. Feild who died in the summer of 1867, purchased of William Kirk and others the lands in the said petition mentioned, & placed thereon a number of slaves & stock and other personal property, which were their joint property as partners, & entered into & formed together an agricultural partnership for the purpose of cultivating the said lands as partnership property and with said personal property, raising thereon crops of cotton & other agricultural products for their
50 joint benefit and advantage as equal partners and for the payment of the debts that have been contracted by them in the pur-

chase of so much of said property as had been purchased at the time of the formation of said partnership, and of such other property as might be purchased by them as such partners. They are advised and believed, and therefore so state the truth to be, that the said lands belonged to the said decedents as partners, and not as ordinary tenants in common, & that all of said partnership property, upon the death of the said decedent, David, became primarily liable for the debts of said partnership to the creditors thereof & to the said Christopher, the survivor, for all balances due to him or to become due on account of advances made by him in his payment of the debts of said copartnership for the lands aforesaid or otherwise; that the style of the copartnership, as ordinarily used by the said partners, was David I. Feild & Co., or D. I. Feild & Co.; that prior to the 23rd day of December, 1856, the said Christopher had advanced to the said partnership firm of D. I. Feild & Co. the sum of $7,385.31, for the payment of the Leach land and for the purchase of negroes in K'y in the summer of 1856, & the said David I. Feild & Co., on the said 23rd December, 1856, executed their writing obligatory of that date for said sum, payable on the 1st day of January, 1858, to bear 6 per cent. interest from maturity, to said Christopher I. Feild, and afterwards, on the 20th day of March, 1859, the said firm executed and delivered their written memorandum or promissory note to the said C. I. Feild, acknowledging that there was due to him the sum of $56.66⅔ dollars, it being, as recited therein, that amount advanced by
51 him on payment to Kirk, balance on concern note due him 1st day of January last past, & reciting that he is to be paid 6 per cent. for said amount from date until paid, the date being the said 20th March, 1857; and afterwards, on the 5th day of June, 1858, the said D. I. Feild & Co. executed & delivered to the said C. I. Field their writing obligatory of that date, and thereby acknowledged there was due to him the sum of $1,100.00, it being, as recited therein, for money that day advanced by payment to Wm. Kirk through his draft on Hewett, Norton & Co., of New Orleans; and afterwards, on the 13th of June, 1859, the said D. I. Feild & Co. executed and delivered to the said C. I. Feild their due bill for $1,389.29 of that last-named date, the said writings obligatory were signed & sealed & delivered to the said C. I. Feild, and the said note & due bill also delivered to him, and were due and wholly unpaid at the death of the said David, deceased; that on the 12th day of December, 1859, after the death of the said David, the said C. I. Field produced & presented to the probate court of said county the said notes attached to a memorandum thereof showing that at that time there was due for principal & interest of said notes & other writings the sum of $17,518.56, with an affidavit thereon that the same as stated was just and true, & that no part of the money stated to be due had been received or any security or satisfaction had been given for the same; which affidavit was duly sworn to before a justice of
52 the peace of said county, and upon the same is indorsed, in the handwriting of & by judge of said probate court, dated December 12th, 1859, the certificate of the said judge that same had been examined and allowed; & on the same 12th of De-

cember, 1859, the said claims, duly probated, were delivered to the clerk of the said probate court for registration, and were by him on that day duly registered (as the same appears by said clerk's certificate) in his office; all of which writings and certificates these respondents are ready to produce & prove on the hearing of this cause or as your honor may otherwise order. They are not able to state the exact amount of the indebtedness above stated to have been advanced on account of the purchaser of the lands in the petition mentioned, but from information & belief they state that three-fourths, if not four-fifths, of said indebtedness was for advances for the purchase of said lands; that the Leach lands and the Kirk lands referred to are part of said lands and the principal part thereof. Respondents deny the allegations of the petitioner that the debts of her deceased husband are or have been discharged or that the lands before mentioned remain free from incumbrances & of right descend to her as his widow & his legal heir or that she has dower therein. They deny that the administrators of said estate have received in money sufficient to pay the said debts; upon the contrary, they state, the said administrator, speaking for himself and the other respondents, from information & belief, that the estate of the said decedent, David I. Feild, was & is insolvent; that the same has been duly represented as such in this court, & by a decree of this court
53 the same was so declared insolvent, and the interest of the said David, dec'd, in said lands was ordered to be sold & the same was sold by the said administrator to the said respondent, Pattie Clay, for the sum of $6,000.00, & deed therefor duly made to her, & the personal estate duly administered & the money duly applied to the payment of the debts of the said decedent, & to his portion of the firm debts; that all sums of money that have come to the hands of said administrator, as he states, or to the hands of former adm'rs, — are informed & believe, were duly applied to the payment of said debts and the expenses of administration, & to the said widow, in allowance for the support of herself & her said child, and that after the due appropriation of all the monies so received from the sale of said lands & from all other sources more than half the debts of the said decedent and of said partnersip to the said C. I. Feild remain due and unpaid, & there are no further assets of said estate to satisfy the same, all of which respondents are ready to prove by the reco ds of the administrator of said estate, to which they here refer, and by other legal evidence; that at the death of the said David the said partnership was otherwise indebted than the amounts above specified to the said Christopher. They therefore deny that the said petitioner is entitled to dower or other interests in said lands. The said Brutus J. Clay, adm'r, is ready & willing, and offers to account before
54 any commissioner appointed by your honor, or otherwise, as your honor may require, as to all matters pertaining to said estate or to said partnership, being adm'r of both the deceased partners, and having been guardian of the said Pattie until the age of majority, & having vested in him the legal title as trustee for the said Pattie of her property and estate in the State of Mississippi by deed, by her duly executed since she attained the age of twenty-

one years, and while sole and unmarried. These respondents, having now fully answered, pray to be hence dismissed with their reasonable costs.

CLARK & MONTGOMERY &
B. F. TRIMBLE,
For Respondents.

STATE OF MISSISSIPPI, *Bolivar County:*

Personally came before the undersigned justice of the peace in and for said county, Brutus J. Clay, Sr., one of the within-named defendants, and made oath that the allegations of the foregoing answers, so far as made of his own knowledge, are true, and those made from information and belief he believes to be true, and that all the allegations thereof are true to the best of his knowledge, information, and belief.

BRUTUS J. CLAY, SR.

Sworn to and subscribed before me this sixth day of January, 1874. I hereby certify that I am acting justice of the peace in & for said county, duly commissioned & qualified, & by virtue of said office have authority to administer oaths.

W. H. WAINWRIGHT,
J. P., B. C.

55 STATE OF KENTUCKY, *Madison County:*

Personally came before me, Wm. Miller, the undersigned, justice of the peace in & for said county, Pattie A. Clay, one of the within-named defendants, & made oath that the allegations of the foregoing answer so far as made of her own knowledge are true, and those made from information and belief she believes to be true, and that all the allegations thereof are true to the best of her knowledge, information, and belief.

PATTIE A. CLAY.

Sworn to & subscribed before me this seventh day of January, 1874, and I hereby certify that I am an acting justice of the peace in and for said county, duly commissioned & qualified, and by virtue of said office have authority to administer oaths.

WM. MILLER, *J. P., M. C.*

And afterwards, viz, Jan'y 21st, 1874, an order was made herein in the words & figures following, to wit:

LUCY C. FEILD
vs.
BRUTUS J. CLAY, Adm'r, *et al.* } No. 312.

This case is continued by consent, with leave to complainants to file exceptions to answers of such defendants as have already answered and leave to parties generally to take proof in this case.

56 And afterwards, viz., April 20th, 1874, an order was made herein in the words & figures following, to wit:

LUCY C. FEILD. }
vs. } No. 312.
BRUTUS J. CLAY, Sr., *et al.* }

Continued under order made herein January 21st, 1874.

And afterwards, viz., Oct'r 19th, 1874, "exceptions to answer & motion to strike from the file" were filed herein in the words & figures following, to wit:

STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FIELD } No. 312. In Chancery.
vs. } October Term, 1874.
BRUTUS C. CLAY *et al.* }

The complainant, Lucy C. Feild, moves the court to suppress *to* the answer of Brutus J. Clay, senior, Brutus J. Clay, Jr., and Pattie A. Clay, and strike the same from the file in this cause, 1st. Because the same is not properly sworn to. 2nd. Because said answer on its face shows that no mortgage or vendor's lien existed at the time of the death of David I. Feild, & no transfer of the lien of Kirk or Leach to C. J. Feild was ever made or executed. 3rd. Because said answer shows that the amount claimed was only borrowed money advanced by one member of the firm to the partnership to pay off debts for which he was personally liable independent of the partnership. 4th. Because no mortgage or other lien is shown by said answer to secure the payment of said sum of money, nor does
57 said answer show that either Kirk or Leach retained a vendor's lien when they conveyed the lands. 5th. Because said answer shows no good and sufficient legal cause to bar complainant's right of dower. 6th. And for other causes to be assigned at the hearing.

TRIGG & BUCKNER,
Sol's for Compl't.

And afterwards, viz., Oct. 21st, 1874, an order was made herein in the words and figures following, to wit:

LUCY C. FEILD }
vs. } No. 312.
BRUTUS J. CLAY, Sr., *et al.* }

This cause coming on this day to be heard on the exceptions of Lucy C. Feild to the answer of Brutus J. Clay, adm'r, Brutus J. Clay, Jr., and Pattie A. Clay to the petition of Lucy C. Feild for allotment of dower in the lands of David I. Feild, deceased, her husband, & the court being sufficiently advised of & concerning the same, & it appearing to the satisfaction of the court that answer shows no legal cause to bar the said Lucy C. Feild's right to dower in the lands of said David I. Feild, deceased, described in said petition for

dower, and the first exception being waived & withdrawn by petition, it is therefore ordered by the court that the said exceptions to said answer be, and the same are hereby, sustained. It is further considered by the court that the motion to suppress the answer & strike same from the file be, and the same is hereby, overruled. Ordered, adjudged, & decreed this 21st day of Oct'r, 1874.

E. STAFFORD, *Chancellor.*

58 And afterwards, viz., January 18th, 1875, an order was made herein in the words & figures following, to wit:

Lucy C. Feild
vs.
Brutus J. Clay, Sr., *et al.* } No. 312.

This cause coming on this day to be heard, and it appearing to the satisfaction of the court that D. I. Feild, minor, heir-at-law of D. I. Feild, dec'd, & John W. Scott, his guardian, are non-residents of the State of Mississippi, and that they have been legally and regularly summoned by publication made in the Floryville Star, a public newspaper printed & published in this county, it is therefore considered & ordered by the court that Jno. Davis be, & he is hereby, appointed guardian *ad litem* to answer for said minor defendant. Ordered, adjudged, & decreed this the 18th day of Jan'y, A. D. 1875.

And on the same day, viz., Jan'y 18th, 1875, the "answer of the g'rd'n *ad litem*" was filed herein in the words & figures following to wit:

Lucy C. Feilds
vs.
Brutus J. Clay, Adm'r, *et al.* } No. 312.

The answer of David I. Feild, minor defendants herein, by Jno. Davis, his guardian *ad litem*, to the bill of complaint of Lucy C. Feild against him & others, answering, says that he knows nothing of the facts stated in the petition of the complainants, but asks for the protection of his rights, he being an infant of tender years.

JOHN DAVIS,
G'rd'n ad litem.

59 Sworn to & subscribed before me this 18 day of Jan'y, 1875.

E. STAFFORD, *Chancellor*

And on the same day, viz., Jan'y 18, 1875, an order was made herein in the words & figures following, to wit:

Lucy C. Feild
vs.
Brutus J. Clay, Adm'r. } 312.

This cause coming on this day to be heard on the motion of complaint for a decree *pro confesso* against Jno. W. Scott, guardian

— D. I. Feild, minor defendant herein, & it appearing to the satisfaction of the court that the said defendant has been duly served by process of publication duly made as required by law, & and said defendant, Jno. W. Scott, guardian, &c., having failed to enter his appearance herein & plead, answer, or demur to petition of complainant, it is therefore considered by the court that all of the allegations of said petition be taken for confessed against the said defendant, Jno. W. Scott. Ordered, adjudged, and decreed this the 18th day of January, A. D. 1875.

And on the same day, viz., January 18, 1875, an order was made herein in the words & figures following, to wit:

LUCY C. FEILDS
vs.
BRUTUS J. CLAY, Sr., *et. al.* } 312.

It appearing to the satisfaction of the court that the name of the complainant has by mistake been written "Fields" instead of Feild, her proper name, & that the same mistake is made in reference to the defendants, D. I. & C. I. Feild, dec'd, it is therefore ordered by the court that wherever the name "Fields" appear in the pleadings it shall be taken & accepted for the real name, "Feild." Ordered, adjudged, and decreed this 18 day Jan'y, 1875.

60

And afterwards, viz., Jan'y 19, 1875, a "final decree" was rendered in the words & figures following, to wit:

LUCY C. FEILD
vs.
BRUTUS J. CLAY, Adm'r, *et al.* } 312.

Be it remembered that this cause coming on to be finally heard on the petition of complainant, answers of Brutus J. Clay, Sr., administrator of C. I. Feild, deceased; of Brutus J. Clay, Jr., Pattie A. Clay, & David I. Feild, minor defendant, by Jno. Davis, his guardian *ad litem*, and the decree *pro confesso* entered herein against Jno. W. Scott, guardian of David I. Feild, minor defendant, and upon the former order and decrees made herein; and it appearing to the satisfaction of the court that David I. Feild, late husband of Lucy C. Feild & father of the defendant, David I. Feild, died seized and possessed of an undivided one-half interest in the following lands, situate, lying, and being in the county of Bolivar & State of Mississippi, to wit: Lots six (6), seven (7), & eight (8), in section four (4); all of section five (5); all — fractional section twenty-one (21); lot five (5), in section twenty-two (22), and about three hundred & fifty-one (351) acres in section- thirteen (13), fourteen (14), & fifteen (15), all in township 21, range nine (9) west; and it further appearing to the satisfaction of the court that Lucy C. Feild, complainant, and widow of the late D. I. Feild, deceased, is entitled to dower in the lands of which her husband died seized and possessed, being the undivided one-half interest in the lands herein-

61

before described, and the court being now sufficiently advised of and concerning the same, doth order, adjudge, & decree that the said Lucy C. Feild is entitled as dower to one-third in quality & quantity of the interest of her husband in the hereinbefore-described lands; that is, to one-sixth of the entire tract of land before described. It is therefore considered by the court, & the court doth hereby order, adjudge, & decree, that the sheriff of Bolivar county shall forthwith summon three entirely disinterested freeholders of his county as commissioner-, not related to any of the parties herein, either by affinity or consanguinity, who shall go upon the lands herein described, &, after being first sworn by said sheriff, shall al-ot & set off by metes & bounds to the said Lucy C. Feild, widow, her dower in the lands, tenements, & hereditaments of — deceased husband, David I. Feild. It is further decreed that — setting apart dower the commissioners shall allot to said Lucy C. Feild one-sixth of the land hereinbefore described, with the tenements and hereditaments thereto belonging, according to quantity & quality, said dower to be laid off — as to work the least amount of injury to the balance of the property, & taking in view any future partition
62 of the lands in this decree mentioned between the heirs-at-law of D. I. Feild, deceased, & C. I. Feild, deceased. It is further ordered, adjudged, and decreed that the sheriff put the petitioner in the possession of the lands, tenements, and hereditaments set apart by the commissioners as her dower in said lands, and that he make report of his proceeding herein to the next term of this court.

Ordered, adjudged, and decreed this 19th day of January, A. D. 1875.

E. STAFFORD,
Chancellor.

And afterwards, viz., Jan'y 20th, 1875, a "petition for appeal" was filed herein in the words & figures following, to wit:

STATE OF MISSISSIPPI, *Bolivar County:*

Chancery Court. January Term, 1875.

LUCY C. FEILD *vs.* BRUTUS J. CLAY, Adm'r, *et al.*

To the Hon. E. Stafford, chancellor of the 15th chancery district of Mississippi & sole presiding — in the chancery court of Bolivar county:

The petition of Brutus J. Clay, Jr., & Pattie A. Clay, his wife, would respectfully represent unto your honor that at this term of the court, to wit, on the 19th day of January, A. D. 1875, a decree for dower in the lands of David I. Feild, dec'd, was passed in favor of said Lucy C. Feild. Your petitioners feel aggrieved by said decree and pray your honor to grant them an appeal from such decree to the next term of the supreme court of Mississippi, to operate as a supersedeas of said decree on petitioners' giving bond in such pen-

alty & with such security as may be ordered by your honor,
63 said bond to be approved by the clerk of this court in vacation; and as in duty bound your petitioners will ever ever pray, &c.

BRUTUS J. CLAY, SR.,
Adm'r C. I. Feild.
BRUTUS J. CLAY, JR., &
PATTIE A. CLAY,
By CLARK & MONTGOMERY &
B. F. TRIMBLE,
Their Solicitors.

And on the same day, viz., Jan'y 20th, 1875, an order was made herein in the words & figures following, to wit:

LUCY C. FEILD
vs. } 312.
BRUTUS J. CLAY, Adm'r, *et al.*,

On the petition of Brutus J. Clay, Sr., administrator of C. I. Feild, Brutus J. Clay, Jr., & Pattie A. Clay, his wife, it is now ordered that an appeal from the final decree made yesterday in this cause in favor of the said Lucy C. for dower in the lands of her deceased husband, David I. Feild, deceased, be, & the same is hereby, granted said petitioners, Brutus J. Clay, Sr., adm'r, & Brutus J. Clay, Jr., & Pattie A., his wife, to the next term of the supreme court of Mississippi, said appeal to operate as a supersedeas of said decree on said petitioners entering into bond in the penalty of one thousand dollars, conditioned according to law, with security to be approved by the clerk of this court in vacation.

Ordered, adjudged, and decreed this 20th day of January, 1875.

And afterwards, viz., Feb'y 17th, 1875, the "appeal bond" was filed herein in the words & figures following, to wit:

STATE OF MISSISSIPPI, *Boliver County:*

64 Know all men by these presents that we, Brutus J. Clay, Sr., Brutus J. Clay, Jr., & Pattie A. Clay & Charles Clark & B. F. Trimble, are held & firmly bound unto Lucy C. Feild in the penal sum of one thousand dollars; for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, jointly & severally, firmly by these presents.

Sealed with our seals & dated this the 5th day of February, A. D. 1875.

The condition of the above obligation is such, that whereas the chancery court of Boliver county, Mississippi, at its January term, 1875, rendered a final decree in favor of the above-named Lucy C. Feild against the above-bound Brutus J. Clay, Sr., as the administrator of C. I. Feild, dec'd, and of David I. Feild, dec'd, and Brutus J. Clay, Jr., and Pattie A. Clay, his wife, and others, for dower in the lands of the said David I. Feild, dec'd, in said Boliver county; and whereas the above-bound Brutus J. Clay, Sr., as such administrator,

and the said Brutus J. Clay, Jr., and Pattie A. Clay, his wife, in open court, by petition in writing at said January term, prayed and obtained an appeal from said decree for dower to the supreme court of Mississippi, which appeal by the order of said court was to operate as a supersedeas on the execution and approval of this bond by the clerk of said chancery court, which is done:

Now if the said Brutus J. Clay, Sr., as such adm'r, and the said Brutus J. Clay, Jr., & Pattie A. Clay, shall well and truly pay and satisfy and perform the original decree, and also such final
65 decree as said supreme court may render, and all the costs which have accrued or may accrue should such decree of the said chancery court be affirmed, then this obligation to be null and void; otherwise to remain in full force and virtue.

BRUTUS J. CLAY, SR. [SEAL.]
BRUTUS J. CLAY, JR. [SEAL.]
PATTIE A. CLAY. [SEAL.]
CHAS. CLARK. [SEAL.]
B. F. TRIMBLE. [SEAL.]

I approve the foregoing bond and securities this the 17th day of February, A. D. 1875.

H. T. FLOREY, *Clerk*,
By JOHN DAVIS, *D. C.*

Opinion of Supreme Court.

BRUTUS J. CLAY, Adm'r, *et al.*
vs.
LUCY C. FEILD. } 1652.

Lucy C. Feild, as the widow of David I. Feild, deceased, filed her petition in the chancery court of Bolivar county, asking that dower might be assigned her in a large body of land in said county, in which her husband had died seized of an undivided one-half interest, the other half interest being owned by his then living brother, Christopher I. Feild. The only child of herself and deceased hus-
66 band the adm'r and heirs of Christopher I. Feild, the owners of the other undivided half interest, were made defendants to the petition. The adm'r and heirs of Christopher answered, setting up that the lands in the petition mentioned had been the property of an agricultural firm, composed of the two brothers, David I. and Christopher Feild, who had bought and used them for the purpose of planting in copartnership; that at the death of David I. both his individual estate and the firm were largely indebted, the principal firm indebtedness being to his brother and copartner, Christopher, who held the firm notes, amounting to $19,000, the consideration of which were amounts paid by Christopher in the purchase of these lands over and above his due proportion. The answer alleged that, after the death of David I., Christopher administered on his estate, probated these notes against it, procured a decree of insolvency against it, and had these lands sold, and that at said sale they had been purchased by Mrs. Pattie Clay, who was the daughter of Chris-

topher and one of the respondents in the answer. It was alleged that the proceeds of the lands and all the personalty had been absolved in the payment of debts and the costs of administration. To this answer petitioner excepted as constituting no bar to her right of dower. The chancellor sustained the exceptions and awarded dower, from which decree respondents appeal. It has been
67 repeatedly held by our predecessors that upon an application for dower only three things were involved, to wit: Marriage, seizure, and death of the husband. To these may be added since 1857 non-alienation for value by the husband. It is said that the rights of third parties are in no manner affected by the allotment of dower, those claiming to have such rights being left to litigate them with the widow in ejectment or otherwise. Even where such third persons are made parties to the proceeding for dower and come in and litigate their rights they will not be bound. Being illegally before the court, their rights will remain as if no decision had been made.

James v. Rowan, 6 Sm. & M., 393.
Pickens *v.* Wilson, 13 S. & M., 691.
Jiggetts *v.* Bennett, 31 Miss., 611.
Jiggetts *v.* Jiggetts, 40 Miss., 719.

In the case at bar Mrs. Pattie Clay, the alleged purchaser of the land under the insolvent proceeding, was only made a party as one of the heirs of Christopher Feild, the joint owner or tenant in common of the land. Under the decision above cited this did not authorize her to litigate in this proceeding her title to the land under her purchase, nor will the decree here preclude her from setting up that title hereafter. It is true that these decisions were made
68 under the old probate court system. There has been, however, no change in the statutes regulating the allotment of dower, and we think that the Legislature has preferred to leave it an *ex parte* proceeding like the probate of a claim against the estate of a decedent on the proof of a will in the common form. This view is strengthened by the consideration that the parties claiming adversity to the husband's title might rely upon a title purely legal, and which, therefore, might best be dealt with in a court of law. In any event, whether their claim was legal or equitable, it would remain, under the view we have taken, wholly unembarrassed by the dower proceedings. It is said, however, that the answer shows that the lands were partnership property, and therefore became assets bound for the firm debts, and especially bound for the debts due the partner, Christopher, which had been incurred in their purchase. If this be so, it is impossible to see how the probate court had jurisdiction to sell them. That tribunal certainly could not wind up the business of the firm as such. The allegation of the answer is that the notes held by Christopher were probated as ordinary debts against the estate of his deceased brother, said estate declared insolvent, and the land sold to pay debts. This seems an abandonment, or at least was certainly not a enforcement, of any lien on the lands as partnership assets for the satisfaction of partner-

ship debts. It would seem that the purchaser cannot claim
69 that her title is derived from a proceeding to enforce a lien in favor of a partnership creditor, because the probate court had no jurisdiction to make such sale, and that if she relies upon her title as that of a purchaser at an ordinary sale to pay debts the widow will not be barred of dower thereby. We will leave these questions, however, to be litigated between the parties in any future proceedings between them. The decree directed *to* the sheriff to allot dower to the petitioner in the lands and to put her in possession thereof. This was erroneous. The land being in the adverse possession of a stranger, the widow must bring ejectment for the recovery of the portion allotted her. So much of the decree as directs that she put in possession is reversed, and this cause remanded in order that the allotment of dower may be proceeded with. Pickens *v.* Wilson; Jiggetts *v.* Jiggetts, *supra.*

CHALMERS, JR.

Final Decree of Supreme Court. April Term, 1876.

MONDAY, *May* 29, 1876.

B. J. CLAY *et al.* }
vs. } 1652.
LUCY C. FEILD. }

This cause having been submitted on a former day of this term, upon the record herein from the chancery court of Bolivar
70 county, and this court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth therefore order, adjudge, and decree that so much of the decree of said court rendered in this cause at the January term thereof, 1875, as directs that Lucy C. Feild be put in possession of the lands, &c., allotted as her dower, be, and the same is hereby, reversed; that so much of said decree as establishes her right of dower be, and the same is hereby, affirmed, and this cause remanded in order that the allotting of dower may be proceeded with. And it is further considered and so ordered, adjudged, and decreed that the appellants do have and recover of the appellee the costs of this cause in this court expended, &c., to be taxed, &c.

71 STATE OF MISSISSIPPI:

I, Oliver Clifton, clerk of the supreme court of Mississippi, do hereby certify that the foregoing pages contain a true and correct copy of the "caption," "petition for dower," "bond for costs," "order granting leave to answer & continuance," "answer of Brutus J. Clay and others," "order of continuance by consent, leave, &c.," "order of continuance under provisions — order," "exceptions to answer & motion to strike from file, &c., and order thereon," "order appointing guardian *ad litem*," "answer of D. I. Feild, minor, by guardian *ad litem*," "order of decree *pro confesso*," "order as to name," "the final decree," "petition for appeal and order thereon," and "appeal bond," as the same appears from the record on file in my office in

the of case Brutus J. Clay *et al. vs.* Lucy C. Feild, No. "1652," and of the opinion and final decree of the supreme court in said cause as the same appears of record in my office.

Witness my hand and the seal of said supreme court, at office at Jackson, this 13 day of December, A. D. 1880.

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Filed Aug. 10, 1882.

G. R. HILL, *Clerk*.

72 EXHIBIT "C" to Bill.

BRUTUS J. CLAY, Adm'r D. I. Feild,
[*vs.*]
Miss P. A. FEILD. } 207.

This indenture, made and entered into this the 20th day of December, A. D. 1869, between Brutus J. Clay, administrator of the estate of David I. Feild, deceased, of the first, and Miss Pattie A. Feild, of the second part, witnesseth: That whereas the said Clay, as administrator as aforesaid, in pursuance of an order of the probate court of Bolivar county, State of Mississippi, heretofore made, advertised to sell at public sale to the highest bidder for cash at the door of the court-house in said county the lands, tenements, and hereditaments of the said decedent, after giving due and legal notice according to law, and the order of said court of the time, place, and terms of said sale, did, on the day of the date hereof, within the hours prescribed by law in pursuance of said orders, and in accordance with said advertisement, offer for sale to the highest bidder for cash the following-named lands in said county, to wit: The undivided half of lots six (6), seven (7), and eight (8), in section four (4), all of section *section* five (5), all fractional section twenty-one (21), lot five (5), in section twenty-two (22), and of about three hundred & fifty-one (351) acres in section thirteen (13), fourteen (14), and fifteen (15), the same being that part of section fourteen (14) of lot one, in section thirteen (13), and lots one & two, in section fifteen (15),
73 as were conveyed by Sarah Miller to Christopher I. and the said David I. Feild by deed dated 24th February, 1857, recorded in records of deed of said county in book F, page 290, and particularly described in said deed, amounting altogether [to] about fifteen hundred & eighty-two (1,582) acres, the undivided half so offered for sale being equal to seven hundred and ninety-one acres, said lands lying and being in township twenty-one (21), range nine (9) west, in said county of Bolivar, and at said sale the said Miss Pattie A. Feild appeared and bid for said land the sum of six thousand dollars, which was the highest and best bid therefor, and the same was accordingly struck off to her. Now, in consideration of the premises, of the said sum of six thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged, the said Clay, as administrator as aforesaid, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Miss Pattie A. Feild, her heirs and assigns, forever, the said undivided

half of all the lands above mentioned and described, to have & to hold the said lands, with the appurtenances, unto her, her heirs and assigns, forever, but, selling as adminstrator, the said Clay is not to be construed as bound by any personal warranty.

74 In testimony whereof the said party of the first part hereunto sets his hand and seal on the day and year first above written.

BRUTUS J. CLAY, *Adm'r.* [SEAL.]

THE STATE OF KENTUCKY, *Bourbon County:*

Personally came before the undersigned, an acting justice of the peace in & for said county, the above-named Brutus J. Clay, who acknowledged that he signed, sealed, and delivered the foregoing deed as his act and deed on the day and year therein mentioned. Given under my hand and seal this the 19th day of January, A. D. 1870.

L. K. ELLIOT,
Justice of Peace.

STATE OF KENTUCKY, *Bourbon County:*

I, James M. Hughes, clerk of the county court in and for said county, do hereby certify that L. K. Elliot, whose name is subscribed to the above certificate [of] acknowledgment is, and was at the date thereof, an acting justice of the peace in and for said county, duly commissioned & qualified according to law. I further certify that I am clerk of the said court, and that the same is a court of record, having a seal. In testimony whereof I have hereunto affixed
75 my hand and seal of said court this the 19th day of January, A. D. 1870.

[s.] J. M. HUGHES, *Clerk.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, H. T. Florey, clerk of the chancery court in & for said county, do hereby certify that the foregoing deed, filed in my office for record February 7th, 1876, was this day duly recorded in deed-book "Y," pages 159 & 160.

Witness my hand & official seal this 11th day of Feb'y, A. D. 1876.

H. T. FLOREY, *Clerk,*
By R. B. WRIGHT, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, clerk of the chancery court in and for said county, do hereby certify that the foregoing four pages, and a part of this page, contains a whole, true, and correct copy of deed from Brutus J. Clay, adm'r, to Miss P. A. Clay, as same appears from deed-book "Y," pages 159 & 160.

Witness my hand and seal of office this 3rd day of January, 1880.

F. R. McGUIRE, *Clerk.*

76 EXHIBIT D TO BILL.

Sarah Miller to David I. Feild and C. I. Feild. Deed.

This indenture, made and entered into this the fourth day of February, A. D. 1857, between Sarah Miller, of the first part, and David I. and Christopher I. Feild of the second part, all of the county of Bolivar and State of Mississippi, witnesseth: That the said Sarah Miller, for and in consideration of the sum of sixteen hundred and sixty-one twenty hundreths dollars to her in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey to said David I. and C. I. Feild, and to their heirs and assigns, forever, all that tract or tracts of land lying east of the bayou or lake known as Berryman Lake, in lot one, of section thirteen, section fourteen, and lots one & two, of section fifteen, all in township No. twenty-one, of range nine west; said lands wishing to be conveyed is more particularly described in A. D. Leech's survey made on the 8th day of May, A. D. 1855, beginning at "A" on said plat or survey; from thence to B; thence to C; thence meandering the Berryman Lake up to D; from thence to A on the back line of section five to corner of same and the beginning point, containing three hundred
77 & fifty-one thirteen hundreths acres, be the same more or less, and lying in the county of Boliver and State aforesaid, and being part of the same land conveyed to the said Sarah Miller by Thomas H. Buckner & wife & Philip B. & Marsh A. Thompson, dated the first day of October, A. D. 1856, to have and to hold said lots and parcels of land above described unto the said David I. and C. I. Feild, and their heirs and assigns, forever; and the said Sarah Miller doth hereby covenant and agree to and with the said David I. and C. I. Feild that she will warrant and defend the title to the several before-described tracts of land unto the said David I. and C. I. Feild, their heirs and assigns, and from all persons claiming by, through, or under her, but against the claims of no other persons, the said Sarah Miller wishing only to convey whatever title she has to said land through the deed before enumerated from Buckner & wife & others to her. In testimony whereof the said Sarah Miller hath hereunto set her hand and seal this the day and year first above written.

her
SARAH x MILLER.
mark.

The words & figures betwen the 14 & 15 line from the top inserted before signing, sealing, &c., &c.

78 STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me, Wm. S. Cook, an acting justice of the peace for said county, the above-named Sally Miller, grantor in the within deed, and acknowledged that she signed, sealed, and

delivered the within deed, by her mark "x" thereto subscribed, on the day and year therein named. Given under my hand and seal this 4th day of Feb'y, A. D. 1857.

WILL. S. COOK, *J. P.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, Isaac S. Robinson, clerk of the probate court, in and for said county, do hereby certify that the foregoing deed was filed in my office for record February 5th, 1857, and that the same has been duly recorded in deed-book F, pages 290 & 291. Given under my hand and the seal of said court, at office, this 18th day of March, A. D. 1857.

I. S. ROBINSON, *Clk,*
[L. S.] By WM. W. ROBINSON, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, clerk of the chancery court in and for said county, do hereby certify that the foregoing pages contain a full, true, & correct copy of the original deed as same appears in record-book F, pages "290 & 291," of the records of my office.

Witness my hand & seal of office this the 18th day of March, 1881.

T. R. McGUIRE, *Clk.*

Filed Aug. 10, 1882.

G. R. HILL, *Clerk,*
By F. M. SCOTT, *D. C.*

79 EXHIBIT E.

BOLIVAR, MISS., *Nov. 25th,* 1859.

DEAR LUCY: I rec'd your letter when Pauline and myself were both sick, and between us we were sick three weeks. Jas. Miller will go up soon and will bring all the articles you and your ma named, and now Moseby Hill is staying down at the place, and I have told him to put up all the articles enumerated, and then to put up anything else that you would likely need that was valuable, thinking that your ma might carry out her original intention that David told me she had, that of buying a house in Lexington and going to housekeeping again. Should she *no* so it would be nothing but right. You should pay board, for I know this would be David's wish were he living, and circumstances required such an event, and I hope you and your ma will both appreciate my motives and the feelings which have actuated me in making this suggestion. David owes individually about $11,000. If this debt is to be paid by crops from the present force on the place after expences of the plantation, interest on this debt, and your support, it will take fully (5) five years, with fair crops and good management, to pay this debt. The present crop is a short one, say 130 bales, and David had gone to much expense, such as building new quarters and overseer's house, much ditching, deadening land, lumber, & including the money I advanced
80 you in the summer, — will consume all the proceeds of the crops of this year; we will try as soon as we can to clear land to

fill the place of the front, which is now lost for cultivation by the levee. I sometimes think it would be better to sell the whole property, my half as well as David's. I do not wish to buy myself. The law requires that the personal property shall first be sold to pay debts; if that is not sufficient then sell the land, but I think the negroes and other personal property would more then pay the debts. If the property was sold William, Mary, and Bob could be bought in for you and the child. You can think of it, and consult with any of your friends. If I sell David's interest I will sell all; my own with it. It was David's any my own intention to have put more negroes on the place. This cannot now be done in consequence of his death and want of means. I wrote you the things were not much injured from being moved so often, but upon a further examination I find them very much damaged, and they will sell for but little, and this is a very poor country to sell 2nd-hand property, furniture, &c. We get an order on the 2nd Monday in Dec'b- for the sale of furniture, &c. You can say to your ma I think the articles will bring little or nothing. If she will write me I will send all her articles back. I do not now propose to send any of the furniture up. Two of your parlor chairs are broke, and your dressing bureau the veneering has nearly all come —.

Filed Aug. 10, 1882.

G. R. HILL, *Clerk.*

81 EXHIBIT "F" to Bill.

MEMPHIS, TENN., *Jan'y 4th*, 1866.

DEAR LUCY: I have been intending to write you for some time, but constant engagement and want of mail facilities has prevented; after getting home and finding the negroes so much demoralized, and so determined not to work, also finding ⅔ of the negroes gone, who I have brought from Texas at an expense of $800, for all I was so much disgusted at their ungratefulness, to say the least of it, I determined to advertise all three of the places for sale, and I had other reasons unnecessary to mention, which, if they ever occur, it would have been best for us all to have sold out before others saw what I now fear may some day happen, but I have failed in getting a purchaser for any of the places. I then offered Content for lease, and had leased it for $10 per acre to a man from New York; he went to Louisville to get his funds; on his arrival at this place he found a letter calling him promptly home, and he wrote me a letter from occurrences which had transpired during his visit South; he would be compelled to back out for this year; you hear of many places being leased, but generally it — places that were not overflown; I have done my best since all these failures; I have formed a partnership with an old overseer, one of the best planters in the country; have give- him ⅓ interest in the crops, let-ing his services and some mules, oxen, & cattle & horses & go against his ⅓ of the rent which he would
82 otherwise have had to pay for; I then have to furnish all the capital to run the place on the Yankee terms, it will require

8 or $10,000, which money I will have to borrow in K'y, but I hope if we have no overflow we will all do well. I am very well assured David's estate can furnish no money, but if my credit will obtain it for the estate as well as myself, I will take the risk and make the effort. Labor is very scarce compared to the quantity that is wanting, so many of the negroes having gone to the free States, also died & in the army, not $\frac{1}{10}$ in number in the South that is wanted. I am here trying to get the labor; as yet, I have not succeeded, but yet have some little hope. I also sent the partner to Vicksburg and another man to Morehouse Parish, La., for labor. I hope out of all the efforts to succeed. I have 6 or 7 of the old Content negroes at my house, but not one of them is willing to go to Content to live; say the place has been idle so long that there is too much hard work. If I succeed in my wishes, I will let you know in 2 or 3 weeks. My regards to your ma & David.

Yours truly,

C. I. FEILD.

Filed Dec. 8, 1881. G. R. HILL, *Clerk.*

83 EXHIBIT "G" to Bill.

Cop. of D. I. Feild & Co. notes to C. I. Feild.

1st. The concern of David I. Feild & Co. is owing to C. I. Feild the sum of five thousand six hundred & sixty-six two-thirds dollars (it being that amount advanced by him of payment to Kirk, balance on concern notes due him 1st day of January last); he is to be paid six per cent. for said amount from date until paid. This 20th Mar*arch*, 1857.

DAVID I. FEILD & CO.

Credit endorsed on above note.

$243.50. Rec'd on the within note the sum of two hundred & forty-three $\frac{50}{100}$ dollars, on settlement of articles purchased at D. I. Feild's sale of personal property by C. I. Feild & D. I. Feild & Co. this 1st day January, 1861.

C. I. FEILD.

Amount of note due 20th March, 1857	$5,662 66
2 years 9$\frac{1}{3}$ months' interest to 1st Jan'y, 1860	943 74
	$6,606 40

BOLIVAR, *June 13th*, 1859.

2nd. Due C. I. Feild or order one thousand three hundred & eighty-nine dollars $\frac{29}{100}$ for value rec'd on settlement to this date. $1,389.29. D. I. FEILD & CO.

Amount of note, $1,389.29.
Interest to 1st Jan'y, 1860, $46.84—$1,436.13.

$7,385.30. On or before the 1st day of January, 1858, the concern of David I. Feild & Co. will be owing C. I. Feild the sum of seven

thousand three hundred & eighty-five $\frac{3}{100}$ dollars, for money advanced the concern for payment for the Leech land & cash advanced for the purchase of negroes in K'y in the summer of 1856, & to bear six per cent. interest from maturity or when due. This 23rd Dec'r, 1856.

D. I. FEILD & CO. [SEAL.]

84 Amount of note due 1st Jan'y, 1858 ..... $7,385 31
Interest at six per cent. to Jan'y, 1860 ..... 886 22

$8,271 53

Due C. I. Feild or order the sum of eleven hundred dollars, it being money this — advanced by paying to Wm. Kirk, through his draft on Hewitt, Norlon & Co., of New Orleans. This 5th day Jan'y 1858.

D. I. FEILD & CO. [SEAL.]

Amount of note due June 5th, 1858 ..... $1,100 00
Interest to Jan'y 1st, 1860 ..... 104 50

$1,204 50

To which is attached affidavit of C. I. Feild, sworn to & subscribed before Wm. S. Cook, an acting justice of the peace for Bolivar county, Mississippi, dated the 12th day of Dec'r, A. D. 1859.

Certificate of Ike S. Robinson, cl'k of the probate court of Bolivar Co., Miss., that the foregoing and annexed claims have this day been duly registered in my office according to law.

Given under my hand & seal of office this the 12th day of December, A. D. 1859.

IKE S. ROBINSON, *Clerk.* [SEAL.]

David I. Feild & Co. is a firm consisting of the estate of David I. Feild & C. I. Feild, partners in the Kirk plantation, known as the "Content place." All the within notes are joint notes of the firm to C. I. Feild; consequently one-half of the within claims is charg-able to the estate of D. I. Feild. This the 10th December, A. D. 1859.

C. J. FEILD.

Examined & allowed December 12th, 1859.

C. T. MILES,
Judge of Probate.

The foregoing is a correct copy of the four (4) notes of D. I. Feild & Co. to C. I. Feild, with the credits & endorsements thereon, and the memoranda in regard to the probate and registration
85 thereof were made by me and are true.

W. E. MONTGOMERY.

In the inventory of the money belonging to & the debts due [the] estate of Christopher I. Feild, dec'd, sworn to by Brutus J. Clay, adm'r, & filed on the 9th day of March, A. D. 1868, recorded in the

book of wills & inventories of the probate court of Bolivar Co., Miss., pages 326 & '7, by P. M. Davidson, cl'k, A. D. Melchoir, D. C., are the four (4) notes probated *vs.* estate of D. I. Feild, Dec'r 12th, 1859, amounting, on the 1st January, 1860, to $17,518.56, one half of which is due estate of C. I. Feild, to wit, $8,759.28.

Approved, confirmed, and ordered to be recorded by—

F. G. GAMBLE,
Judge of Probate.

Messrs. Nugent & McWillie, Jackson, Miss.

GENTLEMEN: Attached hereto you will find a copy [of] the 4 notes of D. I. Feild & Co. to C. I. Feild, alluded to in your letter to me at Natchez, & in yours of 27th Dec'r. 1881, at this place; also memoranda in regard to their probate. The memorandum lasta bove made was taken by me from the original inventory of Brutus J. Clay (which I found among Gen. Clark's papers a few days since, in Bolivar); gave it to Mr. F. Clark to deliver to the chancery clerk at Rosedale, Bolivar county, to be filed with the estate papers.

Y'rs resp'ct'y,

W. E. MONTGOMERY.

Greenville, Miss., Feb'y 11th, 1882.

86 Please acknowledge receipt, also if anything further is required; of course, you represent Pattie A. Clay, *nee* Pattie A. Feild, daughter of C. I. Feild, dec'd.

W. E. M.

Agreement.

BRUTUS J. CLAY & PATTIE A. CLAY *vs.* LUCY C. FREEMAN *et al.*

In this cause it is agreed that the foregoing copies of notes & other papers & documents shall be read as evidence in the above cause to the same extent as if the originals were produced and proven, and that formal proof of the loss of the original is waived.

NUGENT & McWILLIE,
For Defendants.
LAMAR, MAYES & BRANHAM,
For Lucy C. Freeman.

Filed Aug. 10th, 1882.

G. R. HILL, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

In the Probate Court of said County.

To the Honorable Felix G. Gamble, Judge of the probate court of said county of Bolivar:

Your petitioner, administrator of all and singular the goods chattles, and credits which were of the estate of Daniel I. Feild, deceased, respectfully represents — your honor that he has ascertained that the estate, both real and personal, of said decedent'- will *as* insufficient to pay the debts of the said deceased, as will appear
87 by reference to the exhibits made under oath and herewith filed, marked Exhibits "A" & "B" & "C," and parts of this

petition, Exhibit "A" containing a first and true account of all the personal estate & assetts of every description or kind, Exhibit "B" containing a true list or account of the lands, tenements, or hereditaments of the said deceased, & Exhibit "C" being a correct schedule all the debts due from the said deceased. Your petitioner further represents that the said David I. Feild departed this life leaving surviving him Lucy Feilds, his widow & relict, and David Feild, his son & only child & legal heir, who is a minor, & that Isaac W. Scott is the guardian of the said minor, & that the said Lucy & the said David, the son of the said I. Feild, deceased, and the said Isaac —, guardian as aforesaid, all reside in Lexington, Fayette county & State of Kentucky, and their post office is Lexington, Kentucky. The premises considered, your petitioner prays that proper process may issue, &c., and that publication be made as to the heirs or devise-s & all parties interested in the estate of said deceased residing out of the said State of Mississippi, returnable at such term as your honor may direct, and that at the proper time your honor may decree the estate of said decedent to be insolvent, and that all the estate of said decedent, both real & personal, be sold for cash & the proceeds of such sale and all other assets shall be equally distributed among all the creditors in proportion to the sums to them respect-
88 ively due & owing, & that notice be given to the creditors of said deceased notifying them to come forward & have their claims duly probated and registered in the register kept by the clerk of your honorable court, & that any creditors who shall not register his claim within twelve months from the date of the first publication of said notice shall be forever barred. And as in duty bound, &c.

BRUTUS J. CLAY,
Administrator.

STATE OF KENTUCKY, *Bourbon County:*

Personally came before the undersigned, justice of the peace in and for said county, the above-named Brutus J. Clay, and made oath that the allegations of the foregoing petition & report, and all the matters & things therein contained, are true to the best of his knowledge, information, and belief.

B. J. CLAY.

Sworn to and subscribed before me this 2nd day of November, A. D. 1868.

L. K. ELLIOTT,
Justice of the Peace for said County & State.

STATE OF KENTUCKY, *Bourbon County:*

I, James M. Hughes, clerk of *of* the county court of said county & State, *court* which is a court of record in said State, do hereby certify that L. K. Elliott, whose name is subscribed to the foregoing affidavit, and before whom the same was sworn, is and was at
89 the time of taking said affidavit a justice of the peace in & for said county, duly commissioned and qualified, & that to his acts as such full faith and credit are and ought to be given.

Given under my hand & the seal of said court this 2nd day of November, A. D. 1868.

J. M. HUGHES, *Clk.* [L. S.]

EXHIBIT "A."

A just & true account of all the personal estate & assets of every description and kind of the estate of David I. Feild, deceased.

None have come to the knowledge or possession of your administrator.

BRUTUS J. CLAY, *Adm'r.*

EXHIBIT "B."

A true list or account of the lands, tenements, or hereditaments of David I. Feild, deceased.

An undivided half interest in the following lands in the county of Boliver & State of Mississippi, known as the Content plantation, to wit: Lots 6, 7, & 8, in section 4, township 21, range 9 west, containing 238 acres; all of section 5, 21, 9, 700 acres; all fractional 21, 21, 9, 136; lot 5, 22, 21, 9; about 351 acres in section 4 in lot 1 of 13, & in lots 1 & 2 of section 15, 21, 9 west, containing 351 acres; total, 1,582 acres, being so much of said section fourteen, & said lots in sections 13 & 15, as were conveyed by Sarah A. Miller
90 to David I. and Christopher I. Feild by deed dated 24th February, 1857, recorded in the record of deeds of said county in book "F," 290, and particularly described in said deed, containing altogether about 1,582 acres, some of this amount, to wit, 791 acres, being the property of the estate of said David I. Feild, and estimated at the value not exceeding ten dollars an acre; total estimated value, $7,910.00.

BRUTUS J. CLAY, *Adm'r.*

THE STATE OF KENTUCKY, *Bourbon County:*

Personally came before the undersigned, justice of the peace in and for said county, the above-named Brutus J. Clay, and made oath that the above accounts, list, & schedules & all other matters therein contained are true & just to best of his knowledge, information, and belief.

B. J. CLAY.

Sworn to and subscribed before me this 2nd day of November, A. D. 1868.

L. K. ELLIOTT,
Justice of the Peace for Bourbon County, Kentucky.

STATE OF KENTUCKY, *Bourbon County:*

I, James M. Hughes, clerk of the county court of the county
91 & State aforesaid *court*, which is a court of record in said State, do hereby certify that L. K. Elliott, whose name is subscribed to the foregoing affidavit, and before whom the same was sworn, is and was at time of taking said affidavit, a justice of the peace in & for said county, duly commissioned and qualified, and that to his acts as such full faith and credit are and ought to be given.

Given under my hand and the seal of said court this the 2nd day of November, A. D. 1868.

[L. S.] J. M. HUGHES, *Clerk.*

EXHIBIT "C."

Schedule of Debts Due From the Estate.

The undersigned, administrator of the estate of David I. Feild, dec'd, submits under oath the following as a correct schedule of all the debts due from the said deceased, to wit, the following debts due to the estate of C. I. Feild, dec'd:

To ½ the promis-ory notes or due bill of David I. Feild & Co. to C. I. Feild for $5,666 & ⅔ due 20th March, 1857, said note being subject to a credit of $243.50 on the 1st of January, 1861, leaving a balance due as follows:

Amount note due 20th March, 1857		$5,666 66
Interest 3 years 9 & ⅓ months to 1st Jan'y, '61		1,284 44
		$6,951 10
Deduct credit due 1st Jan'y, 1861		243 50
Leaves balance due 1st Jan'y, 1861		$6,707 60
Add interest for 7 years & 6 months to 20th September, 1868		2,550 00
92 Makes		$9,257 60
One-half [of] this am't due from the estate of D. I. Feild		$4,628 80
To ½ due bill from D. I. Feild & Co. to C. I. Feild for $1,389.29, due June 13th, 1859; am't due bill, $1,389.29; int. to 20th Sept., 1868, $772.60 = total amount due bill 20th Sept., 1868		$2,161 89
One half of this debt due from the estate of D. I. Feild		$1,080 94
To ½ due bill of D. I. Feild & Co. to C. I. Feild, due 1st January, 1858, for	$7,385 31	
Int. to 20th Sept., 1868	4,851 87	
Am't due bill & interest	$12,237 18	
One-half of this am't due from estate of D. I. Feild		6,118 52
To ½ due bill of D. I. Field & Co. to C. I. Feild, due 5th June, 1858, for	$1,100 00	
Int. to 20th Sept., 1868	676 91	
Am't due bill & interest	$1,776 91	
One-half of this am't due from estate of D. I. Feild		888 45½
Total amount due, with interest to 20th September, 1868, from estate of D. I. Field to estate of C. J. Feild		$12,716 78

The above claims were duly sworn to by affidavit of C. I. Feild, on the 12th day of December, 1859, and examined and allowed on the same day by C. T. Miles, judge of the court of Bolivar county, State of Mississippi, and duly registered in the clerk's office of said county by Ike S. Robinson, clerk thereof, as appears by the said affidavit & the said certificate of the said judge & clerk attached to said notes & due bills. The original register of claims
93 against estates, including the above claims, this petitioner is informed, has been lost or destroyed, and if any other claims have been probated against said estate the same are unknown to your petitioner.

BRUTUS J. CLAY, *Adm'r.*

I find on the back the following endorsed, in words & figures as follows, to wit:

No. 155. In probate court of Bolivar county. Estate of David J. Feild, dec'd. Brutus J. Clay, adm'r of D. I. Feilds, dec'd. Petition and report of insolvency of estate of D. I. Feild, dec'd. Petition & report & exhibits "A," "B," & "C," filed this the 2nd day of Jan'y, 1869. P. M. Davidson, clerk. Clark & Montgomery, att'ys for petitioner.

I find in the minute book 6 of the probate court, page 247, the following, in words and figures as follows, to wit:

In the Matter of Est. of DAVID I. FIELD, Dec'd, D. J. Clay, Adm'r.

On opening the petition & report of insolvency of the estate of David I. Feild, dec'd, by Brutus J. Clay, adm'r of said estate, and it appearing from the affidavit of the said adm'r that the only parties interested in said estate are Lucy Feild, widow of the said David I. Feild, dec'd, and David Feild, son & only child & legal heir of said David I., dec'd, and a minor; & that Isaac W. Scott, the guardian of said minor, as aforesaid, & that the said Lucy and the
94 said David, the son of the said David I. Feild, dec'd, and the said Isaac, guardian as aforesaid, are now residents of the State of Mississippi, and reside in Lexington, Lafayette county, Kentucky, and their post office is Lexington, Kentucky, it is therefore ordered that publication be made in the Washington County Times, a newspaper published in Greenville, Washington county, Mississippi, requiring the said non-residents to be & appear before our probate court, at the March term, 1869, thereof, to show cause why the said estate should not be declared insolvent & the property mentioned in said petition & report of insolvency should not be sold according to the prayers thereof.

In the Matter of the Est. of D. I. FEILD, dec'd.

The estate of David I. Feild, dec'd, having been reported insolvent by the administrator thereof, it is therefore ordered by the court that Brutus J. Clay, adm'r of said estate, shall, by publication in the Washington County Times, a newspaper published in Washington

county & State of Mississippi, for the space of four successive weeks, give notice to the creditors of said estate notifying them to come forward and have their claims duly probated and registered
95 in the register kept by the clerk, and that any creditors who shall not register his claim within twelve months from the date of the first publication of said notice shall be forever barred.

Citation Notice.

THE STATE OF MISSISSIPPI, *Bolivar County:*

In Probate Court. January Term, 1869.

To Lucy Feilds, widow of David I. Feild, deceased; David Feild, minor heir of D. I. Feild, deceased, and Isaac Scott, guardian of said minor, resident in the city of Lexington, Kentucky:

You are hereby cited to be and appear before the probate court of Bolivar county to be holden at the court-house thereof, in the town of Beulah, on the 2nd Monday of March, A. D. 1869, then and there to show cause, if any you can, why the prayer of the petition of Brutus J. Clay, administrator of the estate of David I. Feild, deceased, reporting said estate insolvent, &c., should not be granted.

By order of the court.

P. M. DAVIDSON, *Clerk.*
By A. D. MELCHOIR, *D. C.*

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before me, John Faun, clerk of the probate court in and for said county & State, John W. Ward, who,
96 being duly sworn, says that he is the publisher of a newspaper called the "Washington County Times," published in the town of Greenville, county & State aforesaid, and that the notice, a copy of which is attached above, was published in said paper for four weeks successively, on the dates and in numbers following:

On the	23rd	day of	January,	1869,	in	No.	27.
"	"	30th	"	"	"	1869,	"	"	28.
"	"	6th	"	"	Feburary,	1869,	"	"	29.
"	"	13th	"	"	"	1869,	"	"	30.
"	"	—	"	"	"	1869,	"	"	—.
"	"	—	"	"	"	1869,	"	"	—.

JOHN W. WARD,
Publisher.

Sworn and subscribed before me this 22nd day of September, A. D. 1869.

JOHN FAUN,
Probate Clerk.

STATE OF MISSISSIPPI, *Washington County:*

J, John Faun, clerk of the probate court in and for said county, do hereby certify that John W. Ward produced the newspaper called

the "Washington County Times," and having compared the copy of advertisement above attached and mentioned in the affidavit of said John W. Ward, publisher, find it to be a correct and true copy of the one published in said newspaper, and that it was published in the numbers following to wit:

97 Numbers 27, 28, 29, 30.

Given under my hand and official seal this 22nd day of September, 1869.

JOHN FAUN,
Probate Clerk.

Price of publication..... $8
Clerk's fees..... $1

Total..... $9

Rec'd above from W. E. Mongomery for ed. Times.
CHAS. C. CUMMINGS.

Citation Notice.

THE STATE OF MISSISSIPPI, *Bolivar County:*

In Probate Court. January Term, 1869.

To Lucy Feild, widow of said David I. Feild, deceased; David Feild, minor heir of D. I. Feild, deceased, and Isaac Scott, guardian of said minor, resident in the city of Lexington, Kentucky:

You are hereby cited to be and appear before the probate court of Bolivar county, to be holden at the court-house thereof, in the town of Beulah, on the 2nd Monday of March, A. D. 1869, then & there to show cause, if any you can, why the prayer of the petitioner, *of* Brustus J. Clay, administrator of the estate of David I. Feild, deceased, reporting said estate insolvent, &c., should not be granted.

By order of the court.

P. M. DAVIDSON, *Cl'k,*
By A. D. MELCHOIR, *D. C.*

98 STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before me, John Faun, cl'k probate court in and for said county and State, John W. Ward, who, being duly sworn, says that he is the manager of a newspaper called the "Washington County Times," published in the town of Greenville, county and State aforesaid, who made oath that the notice, a copy of which is attached above, was published in said paper four weeks successively, in the dates and numbers following to wit:

On the 23d day of January, 1869, No. 27.
" " 30th " " " 1869, " 28.
" " 6th " " February, 1869, " 29.
" " 13th " " " 1869, " 30.
" " 20th " " " 1869, " 31.
" " — " " " ——, " —.

JOHN W. WARD, *Manager.*

Sworn to and subscribed before me this 22nd day of February, A. D. 1869.

JOHN FAUN, *Clk*,
By E. J. COMSTOCK, *D. C.*

STATE OF MISSISSIPPI, *Washington County:*

I, John Faun, clerk of probate court in and for said county, do hereby certify that John W. Ward produced the newspapers
99 called the "Washington County Times," and having examined and produced the newspaper called the "Washington County Times," and having examined and compared the copy of the advertisement above attached and mentioned in the affidavit of said John W. Ward, manager, find it to be a correct and true copy of the one published in said newspaper, and that it was published in the numbers following, to wit: Nos. 27, 28, 29, 30, 31.

Given under my hand and official seal this 22nd day of February, 1869.

JOHN FAUN, *Clk*,
By E. J. COMSTOCK, *D. C.*

Price of publication	$8 00
Clerk's fees	1 00
Total	$9 00

Endorsed in words & figures as follows, to wit: Filed April 8th 1869. H. T. Florey, clerk.

I find on the minute book 6, page 273, the following report in words & figures as follows, to wit:

In the Matter of the Petition of the Report of Insolvency of Est. of D. I. FIELD, Dec'd and Prayer for the Sale of said Estate by Brutus J. Clay, Adm'r.

This cause coming on to be heard on this day upon the petition, proofs, exhibits, and the answers of David Field, dec'd, by
100 his guardian *ad litem*, and the court having duly heard and considered the allegations & proofs of the petitioner & other parties interested, whereupon it appearing to the satisfaction of the court, from proofs & exhibits aforesaid, that citations have been issued and publication made in the manner & form prescribed by law; that publication was duly made in the Washington County Times for the space of four consecutive weeks requiring all parties interested in said estate to appear and answer & show cause why the prayer of said petition should not be granted; and it having been proven in open court that notices & publications against all parties interest- have been made according to law & the order of this court, and the court being satisfied from the proofs & exhibits aforesaid that the estate is insolvent, & that the whole of the real & personal estate will be insufficient to pay the debts of said estate, it is therefore ordered, adjudged, and decreed, & the court doth order, adjudge, and decree, that the said Brutus J. Clay be, and he is hereby, directed

& fully authorized to sell at public sale to the highest bidder, for cash, all the personal estate and all the lands, tenements, & hereditaments described in said petition & exhibits, to wit, and the said administrator to give notice of the time, place, and terms of
101 sale by advertisements, one of which shall be published for the space of four weeks consecutively prior to the day of sale in the Washington County Times, a newspaper published in Greenville, in the county of Washington, State of Mississippi, & by posting a copy of said notice in four public places in said county of Bolivar, one of which shall be at the door of the court-house thereof, for four consecutive weeks prior to the day of sale.

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before me, J. W. Ferguson, clerk of chancery court in and for said county and State, J. S. McNeily, who, being duly sworn, says that he is the manager of a newspaper, the Washington County Times, published in the town of Greenville, county & State aforesaid, who made oath that the notice, a copy of which is here attached, was published in said paper four weeks consecutively in the dates and numbers following, to wit:

On the	4th	day of	Dec'r,	1869,	vol.	2,	No.	20.
"	"	11th	"	"	"	1869,	"	1,	"	21.
"	"	18th	"	"	"	1869,	"	1,	"	22.
"	"	25th	"	"	"	1869,	"	1,	"	23.
"	"	1st	"	"	"	1869,	"	1,	"	24.
"	"	—				——		–	"	—.

102 And I further certify that the several numbers of the newspaper containing the annexed notice have been produced before me and compared with the copy affixed, and that I find the publication thereof to have been correctly made.

J. S. McNEILY,
Manager.

Witness my hand and seal this 14th day of January, 1870.

J. W. FERGUSON,
Clerk, Com. in Chancery.

Printer's fees, $5.00.
Rec'd above from W. E. Montgomery for Ed. Times.
CHAS. C. CUMMINGS.

Insolvent Notice.

Notice is hereby given to all the creditors of the estate of David I. Feild, deceased, that said estate has been reported insolvent, and that they come forward and have their claims duly probated and registered according to law within twelve months from the date of this publication or they will be barred.

BRUTUS J. CLAY, *Adm'r.*

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before me, J. W. Ferguson, *court* of chancery court in and for said county and State, J. S. McNeily, who, being duly sworn, says that he is the manager of a newspaper, the Washington County Times, published in the town of Greenville,
103 county & State aforesaid, who made oath that the notice, a copy of which is here attached, was published in said paper four weeks consecutively in the dates & number following, to wit:

On th:	4th	day of	Dec'r,	1869,	vols.	2,	No.	20.
"	11th	"	"	1869,	"	1,	"	21.
"	18th	"	"	1869,	"	1,	"	22.
"	25th	"	"	1869,	"	1,	"	23.
"	1st	"	"	1869,	"	1,	"	24.
"	—	"	"	——	"	–	"	—

And I further certify that the several numbers of the newspaper containing the annexed notice have been produced before me and compared with the copy affixed, and that I find the publication thereof to have been correctly made.

J. S. McNEILY, *Manager.*

Witness my hand and seal this 14th day of January, 1870.

J. W. FERGUSON,
Clerk, Com. in Chancery.

Printer's fees, $5.00.
Rec'd above from W. E. Montgomery for Ed. Times.
CHAS. C. CUMMINGS.

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before me J. W. Ferguson, *court* of chancery court in and for said county and State, J. S. McNeily, who, being duly sworn, says that he is the manager of a nawspaper, the
104 "Washington County Times," published in the town of Greenville, county and State aforesaid, who made oath that the notice, a copy of which is here attached, was published in said paper four weeks consecutively in the dates and numbers following, to wit:

On the	27th	day of	November,	1869,	vol.	—	No.	19.
"	4th	"	Dec'r,	1869,	"		"	20.
"	11th	"	"	1869,	"		"	21.
"	18th	"	"	1869,	"		"	22.
"	—			1870,			"	—
"	—	"	"	1870,	"		"	—

And I further certify that the several numbers of the newspapers containing the annexed notice have been produced before me and compared with copy affixed, and that I find the publication thereof to have been correctly made.

J. S. McNEILY, *Manager.*

Witness my hand and seal this 14th day of January, 1870.

S. W. FERGUSON,
Com. in Chancery.

Printer's fee, $8.00.

Administrator's Sale.

The undersigned, administrator of David I. Feild, deceased, will, in pursuance of an order of the probate court of Bolivar county, Mississippi, sell at public sale to the highest bidder, within the hours prescribed by law, on Monday, the 20th day of December, 1869, at the door of the court-house in said county, the following
105 lands in said county, to wit:

The undivided half of lots six, seven, and eight in section four; all of section five; all fractional section twenty-one; lot five in section twenty-two, and about three hundred and fifty-one acres [in] sections thirteen, fourteen, and fifteen, being so much of said section fourteen, and of lot one in section thirteen, and lots one and two in section fifteen as were conveyed by Sarah Miller to Christopher I. Feild and said decedent by deed dated 24th of February, 1857, and recorded in Record of Deeds in said county, in book "F," page 290, and particularly described in said deed, the undivided half to be sold as aforesaid, being the undivided half of the said David I. Field in the above lands; all said lands being in township twenty-one, range nine west. Terms of sale cash. The title is believed to be good, but selling as administrator I do not warrant.

BRUTUS J. CLAY,
Administrator.

Rec'd above from W. E. Montgomery for Ed. Times.

CHAS. C. CUMMINGS.

Administrator's Sale.

The undersigned, administrator of David I. Feild, deceased, will, in pursuance of an order of the probate court of Bolivar county,
106 Mississippi, sell at public sale to the highest bidder, within the hours prescribed by law, on Monday, the 20th day of December, 1869, at the door of the court-house in said county, the following lands in said county to wit: The undivided half of lots six, seven, and eight, in section four, all of section five, all fractional section twenty-one, lot five in section twenty-two, and above three hundred and fifty-one acres, sections thirteen, fourteen, and fifteen, being so much of said section fourteen and of lot one in section thirteen and lots one and two in section fifteen as were conveyed by Sarah Miller to Christopher I. Feild, and said decedent, by deed dated 24th of February, 1857, and recorded in record of deeds in said county in book "F," page 290, and particularly described in said deed, the undivided half to be sold as aforesaid being the undivided half of the said David I. Feild in the above lands, all said lands being in township twenty-one, range nine west. Terms of sale, cash. The title is believed to be good, but, selling as administrator, I do not warrant.

BRUTUS J. CLAY,
Administrator.

107 STATE OF MISSISSIPPI, *Washington County*:

Personally appeared before me John Fawn, clerk of the probate court in and for said county and State, R. M. Grunns, who, being duly sworn, says that he is the publisher of a newspaper called The Washington County Times, published in the town of Greenville, county and State aforesaid, and that the notice, a copy of which is attached above, was published in said paper for four weeks successively, on the dates and in the numbers following:

On 27th November, 1869, in No. 19.
" 4th December, 1869, " 20.
" 11th " 1869, " 21.
" 18th " 1869, " 22.

R. M. GROOMS,
Publisher

Sworn to and subscribed before me this 27th day of December, A. D. 1869.

JOHN FAWN,
Probate Clerk.

STATE OF MISSISSIPPI, *Washington County*:

I, John Fawn, clerk of the probate court in and for said county, do hereby certify that R. M. Grooms produced the newspaper called the "Washington County Times," and having examined and compared the copy of the advertisement above attached, and
108 mentioned in the affidavit of said R. M. Grooms, publisher, find it to be — correct and true copy of the one published in said newspaper and that it was published in the numbers following, to wit, numbers 19, 20, 21, & 22.

Given under my hand and official seal this 27th day of December, A. D. 1869.

JOHN FAWN,
Probate Clerk.

I find endorsed on the back the following, in words and figures as follows, to wit: 155. Probate. Est. D. I. Feild, dec'd.
B. J. CLAY, *A'm'dm.*

Publications.

STATE OF MISSISSIPPI, *Bolivar County*:

In the Probate Court.

To the Hon. Felix G. Gamble, judge of the probate court of said county:

The undersigned, administrator of all and singular the goods, chattels, &c., which were of the estate of David I Feild, dec'd, respectfully reports to your honorable court that in pursuance of a decree rendered at a former term of said court he did, after giving due & legal notice by advertisement and by posting according to said decree of the time, place, & terms of sale, offer for sale at public

outcry, at the door of the court-house of said county, to the
109 highest bidder, for cash, on the 20th day of December, A. D. 1869, within the hours prescribed by law, the following lands of said decedent in said county of Bolivar, to wit: The undivided half of lots six, seven, & 8, in section four, all of section five, all fractional section twenty-one, lot 5 in section 22, and of about three hundred and fifty acres in sections thirteen, fourteen, & fifteen, the same being that part of section fourteen of lot one in section thirteen & lots one & two in section fifteen as were conveyed by Sarah Miller to Christopher I. & the said David I. Feild by deed dated 24th February, 1851, recorded in records of deeds of said county, in book "F," page 290, & particularly described in said deed, containing altogether about fifteen hundred — eighty-two acres, the undivided half so offered for sale amounting to about seven hundred and ninety-one acres, said lands lying and being in township twenty-one of range nine west; and at said sale Miss Pattie A. Feild appeared and bid for said land the sum of six thousand dollars, which being the highest and best bid therefore, the same was accordingly struck off
to her and she declared the purchaser thereof, and the said
110 Miss Pattie A. Feild having paid the purchase-money, a deed for said lands was accordingly executed to her, to be delivered as the court may order. And now, having fully reported, your adm'r prays that this his report be received, approved, & ordered to be recorded, & that he be ordered to deliver said deed to the purchaser; and as in duty bound, &c.

BRUTUS J. CLAY, *Adm'r.*

I find endorsed on the back the following, in words and figures as follows, to wit: 155. Probate. Est. David I. Feild, dec'd. Brutus J. Clay, adm'r. No. 3. Report of sale of lands. Filed Nov. 3rd, 1870. Florey, clerk.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, clerk of chancery court in and for said county, do hereby certify that the foregoing 28½ pages contain a whole and true & correct copy of all the proceedings, records, files, papers of every kind, orders, & decrees in the case of the estate of D. I. Feild, deceased, No. 155, touching or relating in any way, directly or indirectly, to the proceedings for and the sale of the lands of said
111 decedent in said county, as the same appears from the papers of said estate now on file in my office, and from the minute book of the probate court of said county now in my office.

Witness my hand and official seal this 12 day of June, A. D. 1882.

T. R. McGUIRE,
Ch'c'y Clk.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Wm. G. Phelps, chancellor of the fourth chancery district of said State, & as such the sole presiding officer of the chancery court of said Bolivar county, do hereby certify that the foregoing certificate

or attestation of T. R. McGuire, clerk of said chancery court, is in due form; that the said T. R. McGuire is the duly-elected, qualified, and acting clerk of said court, and that the signature annexed to said attestation or certificate is the true and genuine signature of the said McGuire.

Witness my signature (there being no seal of office) this 17th day of June, A. D. 1882.

W. G. PHELPS,
Chancellor.

112 THE STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FIELDS
vs. } 312. In Chancery.
BRUTUS J. CLAY.

Be it remembered that on the 12th day of April, 1873, Lucy C. Feild filed her petition in the chancery court of said county against said Brutus J. Clay, Sr., ad ministrator, *et als.*, which petition is in words and figures as follows, to wit:

STATE OF MISSISSIPPI, *Bolivar County:*

In Chancery. April Term, 1873.

LUCY C. FEILD, Complainant,

vs.

BRUTUS J. CLAY, Sr., Adm'r of C. I. Feild, Dec'd, of David I. Feild, Dec'd; Brutus J. Clay, Jr., Pattie A. Clay, David I. Feild, Minors, & John W. Scott, Gu'r'd.

To the Honorable E. Stafford, chancellor of the 15th chancery district of the State of Mississippi, and sole presiding — therein, sitting in chancey for the county of Bolivar at the April term, 1873, thereof:

The petition of Lucy C. Feild, of the county of Fayette and
113 the State of Kentucky, would respectfully show unto your honor that on the — day of May, 1855, she intermarried with David I. Feild, now deceased, and that the said David I. Feild departed this life on the 11th day of September, 1859, leaving as his only heir-at-law him surviving your petitioner and the defendant, David I. Feild, his only child. She would further show that at the time of his death he was seized and possessed in addition to a considerable personal estate of an undivided one-half interest in the following lands, situate, lying, and being in the county of Bolivar and State of Mississippi, to wit:

The undivided one-half of lots six, seven, & eight, in section four, all of section five (5), all fractional section twenty-one (21), lot five, in section twenty-two (22), and about three hundred & fifty-one (351) — in section- thirteen (13), fourteen (14), & fifteen (15), all in township twenty-one (21), range nine (9) west. That the

other undivided one-half interest belonged to C. I. Feild, his brother, now deceased, who left him surviving Pattie A. Clay, wife of the defendant, Brutus J. Clay, Jr.

Your petitioner would further show unto your honor that John W. Scott is the guardian of David I. Feild, minor, and Brutus
114 J. Clay is the legally appointed administrator of the estate of both C. I. Feild and David I. Feild, dec'd.

Your petitioner is informed, believing, and so believing charges, that she is the widow of David I. Feild, deceased, is entitled to an undivided one-half interest of said lands so had and owned by her husband at the time of his death, after the payment of his debts. She would further show unto your honor that she is informed, believes, and so believing charges, that all of the just and legal debts due by her deceased husband have been fully paid off and discharged, and that the lands hereinbefore described remain free from all incumbrance, and of right descend to her legal heirs and to her as his widow. She would show that the administrator of said estate received far more in money than was necessary to pay off all of said debts. She would state to your honor that the Brutus J. Clay, Sr., adm'r of the estate of both D. I. and C. I. Feild, rec'd as one in the month of August, 1867, the sum of four thousand seven hundred & twenty-nine $\frac{76}{100}$ dollars, which was far more than sufficient to pay all amounts due from the estate of D. I. Feild to any or all of his creditors.

Your petitioner therefore prays that a subpœna or citation
115 may issue herein requiring the said Brutus J. Clay, Sr., adm'r of the estate of both C. I. Feild & David I. Field, dec'd, Brutus J. Clay, Sr., & Pattie A. Clay, his wife, Jno. W. Scott, guardian, and David I. Feild to be and appear before your honorable court at the next April term thereof and show cause why, if any they can, that her petition for dower in the *real* estate of David I. Feild, deceased, should not be granted, and if mistaken in relief sought she would pray for general and equitable relief in the premises; and as in duty bound she will ever pray, &c.

TRIGG & BUCKNER,
Sol's for Petitioner.

The above is endorsed in words and figures as follows, to wit:
Filed April 12th, 1873.

H. T. FLOREY, *Clerk*,
By E. GORDEN, *D. C.*

On the 1st day of Aug., 1873, the following affidavit was filed in words & figures as follows, to wit:

STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me, H. T. Florey, clerk of the chancery court in and for said county and State, W. R. Trigg, one of the solicitors for compl't in a certain cause pending in the chancery court of said county, numbered 312 on the docket of said court,
116 wherein Lucy C. Feild is compl't and Brutus J. Clay, adm'r

C. I. Field, dec'd, *et al.* are defendants, who, being duly sworn, says that Brutus J. Clay, Sr., adm'r, & C. I. Feild, dec'd, Brutus J. Clay, junior, Pattie A. Clay, David I. Feild, a minor, and Jno. W. Scott, guardian of David I. Field, minor, are now residents of the State of Mississippi, and that he is informed and believes that the residence and post-office address of said defendants, Brutus J. Clay, Sr., adm'r, is Richmond, Madison county, State of Kentucky; that the residence and post-office address of the said Brutus J. Clay, Jr., and Pattie A. Clay, — Paris, Bourbon county, Kentucky, and that the residence and post-office address of David I. Field, minor, & Jno. W. Scott, guardian, is the city of Lexington, county of Fayette, State of Kentucky.

He therefore asks that publication issue as required by law, addressed to each of said several defendants.

W. R. TRIGG.

Sworn to & subscribed before me this 1st day of August, 1873.

H. T. FLOREY, *Clerk*,
By JOHN DAVIS, *D. C.*

Endorsed in figures & words as follows, to wit:
Filed Aug. 1, 1873.

H. T. FLOREY, *Clerk*.

117 Whereas the following order was made in words & figures as follows, to wit:

It appearing from affidavit filed herein that Brutus J. Clay, Sr., adm'r of C. I. Feild, dec'd, Brutus J. Clay, junior, Pattie A. Clay, David I. Feild, minor, and Jno. W. Scott, heirs, guardian, defendants to the bill of complaint filed herein, are non-residents of the State of Mississippi, and that their address is as follows, to wit: That of Brutus J. Clay, Sr., administrator C. I. Field, dec'd, is Richmond, Madison county, Kentucky; of Brutus J. Clay, Jr., and Pattie A. Clay, is Paris, Bourbon county, Kentucky; of David I. Feild, minor, & Jno. W. Scott, his guardian, is Lexington, Fayette county, Kentucky:

It is therefore ordered that unless said several defendants shall appear before the clerk of the chancery court of said county & State at his office at the court-house, in the town of Floreyville, in said county, on Wednesday, the 6th day of Oct., 1873, the same being a rule day of said *county*, and plead, answer, or demur to the bill of complaint herein the allegations thereof will be held & taken for confessor as to them.

It is further ordered — this order be published in the Floreyville Star, a public newspaper printed and published in the town of Floreyville, in said county, for four consecutive weeks, and that the
118 clerk of the court forward a copy of this order to each of said several defendants, at their respective post-office address-. This order at rules August 4th, 1873.

H. T. FLOREY, *Clerk*,
By JOHN DAVIS, *D. C.*

On Oct. 21st, 1873, the following proof was made & filed in words & figures as follows, to wit:

Personally appeared before me, H. T. Florey, clerk of the chancery court in and for said county, John W. Word manager of a newspaper printed and published in the town of Floreyville, Bolivar county, Mississippi, called the Floreyville Star, who, being sworn, deposes and says that the publication of a certain notice, a true copy of which is hereunto affixed, has been made in said paper for four weeks consecutively, to wit:

Vol. 1, No. 30, August 9, 1873.
" 1, " 31, " 16, "
" 1, " 32, " 23, "
" 1, " 33, " 30, "
" 1, " 34, September 6, 1873.

JOHN W. WORD.

And I further certify that the several numbers of the newspapers containing the above-mentioned notice has been produced before me and compared with the copy annexed, and I find the publication to have been correctly made. Witness my hand & official seal this 21st day of Oct., A. D. 1873.

H. T. FLOREY, *Clerk*,
By JOHN DAVIS, *D. C.*

119 STATE OF MISSISSIPPI, *Bolivar County:*

I, H. T. Florey, clerk of chancery court in and for said county, do hereby certify that a copy of the order of publication, a copy of which is annexed to the foregoing proof of publication, was by me, on the 11th day of August, 1873, duly marked, pastage prepaid, to the defendants at their post-office address therein named; and I further certify that on the 23rd day of August, 1873, I mailed copies of said notices [to] Brutus J. Clay, Sr., adm'r, at Paris, Bourbon county, Kentucky; to Brutus J. Clay, Jr., at Richmond, Madison Co., Ky., & to Pattie A. Clay, at Richmond, Madison Co., Ky.

Witness my hand & official seal this 21st day of Oct., 1873.

H. T. FLOREY, *Clerk*,
By JOHN DAVIS, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FEILD, Complainant,
vs.
BRUTUS J. CLAY, Sr., Adm'r, C. I. FEILD, dec'd, *et al.*, Defendants. } No. 312. In Chancery.

It appearing from affidavit filed herein that Brutus J. Clay, Sr., administrator of C. I. Feild, deceased; Brutus J. Clay, Jr., Pattie A. Clay, David I. Feild, minor, and John W. Scott, his guar-
120 dian, defendants to bill of complaint filed herein, and now residents of the State of Mississippi, and that their residence and post-office address is as follows, to wit: That of Brutus J. Clay,

Sr., adm'r of C. I. Feild, dec'd, is Richmond, Madison county, Ky.; of Brutus J. Clay, Jr., and Pattie A. Clay is Paris, Bourbon county, Ky.; of David I. Feild, minor, and Jno. W. Scott, his guardian, is Lexington, Fayette county, Kentucky.

It is therefore ordered that unless said several defendants shall appear before the clerk of the chancery court of said county and State, at his office at the court-house, in the town of Floryville, in said county, on Monday, the 6th day of October, 1873, the same being a rule day of said court, and plead, answer, or demur to the bill of complaint herein, the allegations thereof will be held and taken for confessed as to them.

It is further ordered that this order be published in the Floryville Star, a public newspaper printed and published in the town of Floryville, in said county, for four consecutive weeks, and that the clerk of this court forward a copy of this order to each of said several defendants at their respective post-office address-.

Thus ordered at rules August 4th, 1873.

H. T. FLOREY, *Clerk*,
By JOHN DAVIS, *D. C.*
TRIGG & BUCKNER,
Sol's for Com.

Aug. 9, 1873. 30.

121 On the 20th day of January the following answers *was* filed in words & figures as follows, to wit:

The answers of Brutus J. Clay, Sr., adm'r, &c.; Brutus J. Clay, Jr., & Pattie A. Clay, three of the defendants to the petition of the said Lucy C. Feild for dower.

These defendants, answering, admit that the said Lucy intermarried with the said David I. Field, now dec'd, and that said David died about the date in the said petition mentioned; that said Lucy is the widow of the said deceased, but they deny that she is one of his heirs-at-law, and they say that David I. Feild, a minor son of the said decedent, is his sole heir-at-law. They deny that the said decedent died seized and possessed in addition to a considerable personal estate of one-half interest in the lands in said petition mentioned & set forth, otherwise than hereinafter mentioned or having any other interest than as hereinafter stated. They state that some years before the death of the said decedent he & his brother, Christopher I. F ild, who died in the summer of 1867, purchased of Wm. Kirk and others the lands in said petition mentioned and placed thereon a number of slaves and stock & other personal property which *were* their joint property as partners, and en-
122 tered into and formed together an agricultural partnership for the purpose of cultivating the said land as partnership property, and with said personal property raising thereon crops of cotton and other agricultural products for the profit, benefit, and advantage as equal partners, & for the payment of the debts that had been contracted by them in the purchase of so much of said

property as had been purchased at the time of the formation of said partnership, and of such other property as might be purchased by them as such partners.

They are advised and believed, and therefore so state the truth to be, that the said lands belonged to the said decedents as partners and not as ordinary tenants in common, and that all of said partnership property upon the death of the said decedent David became primarily liable for the debts of said partnership to the creditors thereof and to the said Christopher, the survivor, for all balances due to him, or to become due on account of advances made by him in his payment of the debts of the said copartnership for the lands aforesaid or otherwise; that the style of the said copartnership, as ordinarily used by the said partners, was David I. Feild & Co., D. I. Feild & Co.; that prior to the 23rd day of December, 1856, the said Christopher had advanced to the said partnership firm of D. I. Feild & Co. the sum of $7,385.31
123 for the payment of the Leech land and for the purchase of negroes in Ky. in the summer of 1856, and the said David I. Feild & Co. on the said *23th* December, 1856, executed their written obligation of that date for said sum payable on the 1st day of January, 1858, to bear 6 per cent. interest from maturity to said Christopher I. Feild. And afterwards, on the 20th of March, 1857, the said firm executed and delivered their written memorandum or promis-ory note to the said C. I. Feild, acknowledging that there was due to him the sum of $5,666\frac{2}{3}$ *dollars*, it being, as recited therein, that amount advanced by him in payment to Kirk bal*l*ance on concern note due him 1st day of January last past due, reciting that he is to be paid 6 per cent. for said am't from date until paid, the date being the said 20th March, 1857. And afterwards, on the *3th* day of June, 1858, the said D. I. Feild & Co. executed & delivered to the said C. I. Feild their written obligation of that date, and thereby acknowledged there was due to him the sum of $1,100.00, it being, as recited therein, for money that day advanced by payment to Wm. Kirk through his draft on Hewitt, Norton & Co., of New Orleans. And afterwards, on the 13th of June, 1859, the said D. I. Feild & Co. executed and delivered to the said C. I. Feild their due bill
124 for $1,389.29 of that last-named date. The said writings, obligatory, were signed & sealed & delivered to the said C. I. Feild & the said note & due bill also delivered to him & were due and wholly unpaid at the death of the said David, deceased; that on the 12th day of December, 1859, after the death of the said David, the said C I. Feild produced and presented to the probate court of said county the said notes attached to a memorandum thereof, showing that at that time there was due for principal & interest of said notes & other writing the sum $17,518.56, with an affidavit thereon that the same as stated was just and true, and that no part of the money stated to be due had been received, or any security or satisfaction given for the same, which affidavit was duly sworn to before a justice of the peace of said county, and upon the same is endorsed in the handwriting of & by [the] judge of the said probate court, dated December 12th, 1859, the certificate of the said

judge; that same had been examined & allowed, and on the same 12th of December, 1859, the said claim duly probated were delivered to the clerk of the said probate court for registration and were by him *and* that day duly registered in his office as the same acknowledged by said clerk; all of which writings & certificates these respondences are ready to produce and prove on the hearing of
125 this cause, or as your honor may otherwise order.

They are not able to state the exact amount of the indebtedness above stated to have been advanced on account of the purchase of the lands in the petition mentioned, but, from information and belief, they state that three-fourths, if not four-fifths, of said indebtedness was for advances for the purchase of said lands; that the Leech lands & the Kirk lands referred to are part of said lands, and the principal part thereof.

Respondents deny the allegation of the petition that the debts of her deceased husband are or have been discharged, or that the lands before mentioned remain free from incumbrance, and of right descend to her as his widow and his legal heirs, or that she has dower therein. They deny that the administrators of said estate have received in money sufficient to pay the said debts. Upon the contrary thereof, [they] state, the said administrator speaking for himself and the other respondents from information and belief, that the estate of the said decedent, David I. Feild, was and is insolvent; that the same has been duly represented as such in this court, and by decree of this court the same was so declared insolvent, and the interest after said David I., dec'd, in said lands was ordered
126 to be sold and the same was sold by the said administrator to the said respondent, Pattie Clay, for the sum of $600.00 and deed therefor duly made to her, and the money duly applied to the payment of the debts of the said decedent and to his portion of the said firm debts; that all sums of money that have come to the hands of said administrator, as he states, or to the hands of former adm'r, as respondents are informed, believe ⅓ were duly applied to the payment of said debts and the expenses of administration, & to the said widow in allowances for the support of hersel and her said child; and that after the due appropriation of all the monies so received from all other sources, more than half the debts of the said decedents and of said partnership to the said C. I. Feild remain due & unpaid, & there are no further assets of said estate to satisfy the same. All [of] which respondents are ready to prove by the records of the administration of said estate, to which they here refer, & by other legal evidence. That at the death of the said David the said partnership was otherwise indebted than the amounts above specified to the said Christopher; they therefore deny that the said petitioner is entitled to dower or other interest in said lands.

The said Brutus J. Clay, adm'r, is ready & willing & offers to
127 account before any commissioner appointed before your honor or otherwise, as your honor may require, as to all matters pertaining to said estate or to said partnership, being adm'r of both the deceased partners and having been guardian of the said Pattie until the age of maturity and having vested in him the legal title

as trustee for the said Pattie of her property & estate in the State of Mississippi by deed by her duly executed since she attained the age of twenty-one, & while sole & remained —. These respondents, having now fully answered, pray to be hence dismissed with their reasonable cost, &c.

CLARK & MONTGOMERY AND
B. F. TRIMBLE,
For Respondents.

Personally came before the undersigned, justice of the peace in and for said county, Brutus J. Clay, Sr., one of the within-named defend's, and made oath that the allegation of the foregoing answers, so far as made of his own knowledge, are true, and those made from information and belief he believes to be true, & that all the allegations thereof are true to the best of his knowledge, information, & belief.

BRUTUS J. CLAY.

Sworn to and subscribed before me this sixth day of January (6th), 1874.

128 I hereby certify that I am an acting justice of the peace in and for said county, duly commissioned & qualified, and by virtue of said office have authority to administer oaths.

W. H. WAINRIGHT, *J. P. B. C.*

Personally came before the undersigned, justice of the peace in and for said county, Pattie A. Clay, one of the within-named defendents, and made oath that the allegation of the foregoing answers, so far as made of her own knowledge, are true, and those made from information and belief she believes to be true, & that all the allegation- thereof are true to the best of her knowledge, information, and belief.

PATTIE A. CLAY.

Sworn to & subscribed before me this seventh day of January, 1874, and I hereby certify that I am an acting justice of the peace in and for said county, duly commissioned & qualified, and by virtue of said office have authority to administer oaths.

WM. MILLER, P. *P. M. C.*

Endorsed in words & figures as follows, to wit: Filed Jan. 20, 1874.

H. T. FLOREY, *Clerk.*

129 On the 18th day of January, 1875, the following decree *pro confesso* was taken in words & figures as follows, to wit:

This cause coming on this day to be heard on the motion of complain-t for a decree *pro confessed* against John W. Scott, guardian of said D. I. Feild, minor defendent herein, and it appearing to the satisfaction of the court that the said defen lent has been duly served by process of publication duly made as required by law, and

said defendent John W. Scott, guardian, &c., having failed to enter his appearance herein and plead, answer, or demur to petition of the complainant, it is therefore considered by the court that all of the allegation- of said petition be taken for confessed against the said defendant, John W. Scott. Ordered & -judged and decreed this 16th day of January, A. D. 1875.

On the 18th day of January, 1875, the following order appointing guardian *ad litem* was made in words & figures as follows, to wit:

This cause coming on to be heard this day, and it appearing to the satisfaction of the court that D. I. Feild, minor heir-at-law of D. I. Feild, dec'd, and John W. Scott, his guardian, are non-residents of the State of Mississippi, and that they have been legally
130 & regularly summoned by publication made in the Floryville Star, a public newspaper printed & published in this county, it is therefore considered and ordered by the court John Davis be, and he is hereby, appointed guardian *ad litem* to answer for said minor defendent. Ordered & -judged & decreed this the 18th day of January, A. D. 1875.

On the 18th day of January, 1875, the answer of Jno. W. Davis, guardian *ad litem*, was filed in words & figures as follows, to wit:

The answer of David I. Feild, minor defendent herein, by Joh Davis, his guardian *ad litem*, to the bill of complaint of Lucy C. Feild against him and others, answering, says that he knows nothing of the facts stated in petition of the complainant, but asks for the protection of his rights, he being an infant of tender years.

JOHN DAVIS,
Guardian ad litem.

Sworn to and subscribed before me this 18th day of January, 1875.

E. STAFFORD,
Chancel-or.

Endorsed in words and figures & follows, to wit: Filed Jan'y 18th, 1875. H. T. Florey, clerk.

131 On the 18th day of January, 1875, the following order was made in words and figures as follows, to wit:

It appearing to the satisfaction of the court that the name of the complainant has been by mistake written Feilds instead of Feild, her proper name, and that the same mistake is made in reference to the defendant-, D. I. Feild and C. I. Feild, dec'd, it is therefore ordered by the court solicitors for all parties consenting that whenever the name Fields appears in the pleadings that it shall be taken and accepted for the real name Feild; ordered, adjudged, and decreed this 19th day of January, A. D. 1875.

On the 19th day of January, 1875, the following final decree was made in words and figures as follows, to wit:

Be it remembered that this cause coming on to be finally heard on the petition of complainant, answers of Brutus J. Clay, Sr., adm'r of C. I. Feild, dec'd, of Brutus J. Clay, Jr., Pattie A. Clay, and David I. Feild, minor defendant, by John Davis, his guardian *ad litem*,

and the decree *pro confesso* entered herein against John W. Scott, guardian of David I. Feild, and upon the former orders and decrees made herein, minor defendants, and it appearing to the satis-
131½ faction of the court that David I. Feild, late husband of Lucy C. Feild, and for the defendant, David I. Feild, died seized and possessed of an undivided one-half interest in the following lands situated, lying, and being in the county of Bolivar, and State of Mississippi, to wit, lots six (6), seven (7), & eight (8), in section four (4), all of section five (5), all fractional section twenty-one (21); lot five (5), in section twenty-two (22), and about three hundred & fifty-one (351) acres in section- thirteen (13), fourteen (14), and fifteen (15), all in township twenty-one (21), range (9) nine west. And it further appearing to the satisfaction of the court that Lucy C. Feild, complainant and widow of the late D. I. Feild, deceased, is entitled to dower in the lands of which her husband died seized and possessed, being the undivided one-half interest in the lands hereinbefore described, and the court being now sufficiently advised of and concerning the same, doth order, adjudge, and decree that the said Lucy C Feild is entitled as dower to one-third in quality & quantity of the interest of her husband in the hereinbefore-described lands—that is, to one-sixth of the extire tract of land hereinbefore described; it is therefore considered by the court, and the court doth hereby order, adjudge, and decree, that the sheriff of Bolivar county shall forthwith summons three entirely disinterested
132 freeholders of his county as commissioners, not related to any of the parties herein either by affinity or consanguinity, who shall go upon the lands herein described, and, after being first sworn by said sheriff, shall allot and set off by metes & bounds to the said Lucy C. Feild, widow, her dower in the lands, tenements, and hereditaments of — deceased husband, David I. Feild. It is further decreed that, setting apart dower, the commissioners shall allot to said Lucy C. Feild one-sixth of the lands hereinbefore described, with the tenements and hereditaments thereto belonging, according to quantity & quality; said dower to be so laid off as to work the least amount of injury to the balance of the property, and taking in view any future partition of the lands in their decree mentioned between the heirs-at-law of D. I. Feild, deceased, & C. I. Feild, deceased. It is further ordered, adjudged, and decreed that the sheriff put the petition- in the possession of the lands, tenements, and hereditaments set apart by the commissioners as her dower in said lands, and that he make report of his proceedings herein to the next term of this court. Ordered, adjudged, and decreed this 19th day of January, A. D. 1875.

E. STAFFORD, *Chancellor.*

133 On 20th day of January, 1875, the following petition was filed in words & figures as follows, to wit:

To the Hon. E. Stafford, chancellor of the 15th chancery district of Mississippi, & sole presiding in the chancery court of Bolivar county:

The petition of Brutus J. Clay, Sr., adm'r of C. I. Feild, dec'd; Brutus J. Clay, Jr., Pattie A. Clay, his wife, would respectfully represent unto your hon. that at this term of the court, to wit, on the 19th day of January, A. D. 1873, ordered decree in the lands of David I. Feild. Your petitioner *filed* aggrieved by said decree and pray your hon. to grant them an appeal from said decree to the next term of the supreme court of Mississippi, to operate as a supersedeas of said decree in petitioners giving bond in such penalty & with such security as may be ordered by your honor, said bond to be approved by the clerk of this court in vacation; and also duly *find* your petitioner will ever pray, &c.

BRUTUS J. CLAY, SR., *Adm'r.*
C. I. FEILD.
BRUTUS J. CLAY, JR.
PATTIE A. CLAY.
By CLARK & CLARK,
& B. F. TRIMBLE,
Their Solicitors.

Endorsed in words & figures as follows, to wit:
Filed June 20, 1875.

H. T. FLOREY, *Clerk.*

134 On 20th day of January, 1873, the following order was made in words & figures as follows, to wit: on petition of Brutus J. Clay, Sr., adm'r of C. J. Feild, Brutus J. Clay, Jr., and Pattie A. Clay, his wife. It is now ordered that an appeal from the final decree made yesterday in this cause in favor of the said Lucy C. for dower in the lands of her deceased husband, David I. Feild, dec'd, be, and the same is hereby, granted said petitioner-, Brutus J. Clay, Sr., adm'r, & Brutus J. Clay, Jr., & Pattie A. Clay, his wife, to the next term of the supreme court of Mississippi, said appeal to operate as a supursedeas of said decree on said petitioners entering into bond in the penal sum of four thousand dollars, conditioned according to law, and with security to be approved by the clerk of this court in vacation, ordered, adjudged, & decreed this 20th day of January, 1875.

On the 17th day of Dec., 1878, the following mandate from the supreme court of Mississippi was filed in my office in the words & figures as follows, to wit:

The State of Mississippi to the honorable chancery court of Bolivar county, Greeting:

Whereas on the 29th day of May, 1876, the same being a day of the regular term of our supreme court began and held in
135 the court-room in the capitol in the city of Jackson, in said State, on the 3rd Monday, the 17 day of April, in the year of

our Lord 1876, the following final decree was rendered by our supreme court, to wit:

BRUTUS J. CLAY *et al.*
vs. } No. 1652.
LUCY C. FEILD.

This cause having been submitted on a former day of this term upon the record herein from the chancery court of Bolivar county, and this court having sufficiently examined and considered the same, and being of opinion that there is error therein, therefore doth order, adjudge, and decree that so much of the decree of said court rendered in this cause at the January term thereof, A. D. 1875, as direct that Lucy C. Feild be placed in possession of the lands, &c., allotted as her dower, be, and the same is hereby, reversed; that so much of said decree as establishes her right of dower be, and the same is hereby, affirmed, and this cause removed in order that the allotting of dower may be proceeded with.

And it is further considered and so ordered, adjudged, and decreed that the appellants do have and recover of the appellee the
136 costs of this cause in this court expended, &c., to be taxed, &c. You are therefore hereby commanded that such execution and further proceedings be had in said cause as, according to right & justice, the judgment of our supreme court, and the law of the land, ought to be had.

Witness the Hon. H. F. Simsall, chief justice of our supreme court; also the signature of the clerk and the seal of said court hereunto affixed, at office at Jackson, this the 13th day of December, A. D. 1878.

OLIVER CLIFTON, *Clerk.*

On the 8th day of April, 1879, the following petition was filed in words and figures as follows, to wit:

LUCY C. FREEMAN & C. L. FREEMAN, Her Husband, Residents of St. Louis, Missouri,

vs.

PATTIE A. CLAY and BRUTUS J. CLAY, Her Husband, Residents of Richmond, Kentucky; David I. Feild, Minor, Resident of St. Louis, Missouri; and John W. Scott, His Guardian, Resident of Bolivar Co., Miss., Defendants.

To the Hon. W. G. Phelps, chancellors of the fourth chancery district of the State of Mississippi and sole presiding — in equity in & for the county of Bolivar:

The petition of Lucy C. Freeman & her husband, C. L.
137 Freeman, would respectfully show unto your honor & state that the said Lucy C. Freeman, prior to her intermarriage with her copetitioner, C. L. Freeman, & while a widow, named Lucy C. Feild, heretofore, to wit, on April 12th, A. D. 1873, filed her petition for dower in the chancery court of said Bolivar county, making the above-named defendent and Brutus J. Clay, Sr., adm'r of the

estate of C. I. Feilds, and also adm'r of the estate of David I. Feilds, dec'd, defendants to said petition; which petition prayed dower in the undivided one-half of the following-described lands, lying & being and situated in said Bolivar county, to wit: Lots six, seven, & eight in, section four, all section five, all fractional section twenty-one, lot five, in section twenty-two, and about 351 acres in section-thirteen, fourteen, & fifteen, all in township twenty-one, range nine west.

Your petitioners would further state that such proceedings were had in said cause that finally on the 19th day of January, A. D 1875, a final decree was rendered therein wherein it was ordered, adjudged, and decreed that the said Lucy C. was entitled to dower in said undivided one-half interest in said lands, same being one-sixth part of the entire tract of lands above described, and the sheriff
138 was ordered to summons these freeholders, as the law requires, to set apart and allot the said — to their respective estates *is* claimed & owned by the parties compl'ts and defendants in this petition, and that no other person or persons have or claim any interest therein. Your petitioners would further show unto your honor & state that the said final decree rendered by said chancery court on January 19th, A. D. 1875, has never been executed or carried into effect, in whole or in part, and that the said dower in the aforesaid lands has never been set apart, and your petitioners now pray that said Pattie A. Clay & Brutus J. Clay, her husband, David I. Feild & Jno. W. Scott, guardian, be made parties defendant to this petition; that they be compelled to appear and answer, &c.; and that the said final decree rendered by said chancery court on Jan'y 19th, 1875, in so far as same was appraised by the supreme court, be revived in the name of your petitioners, Lucy C. Freeman, her present husband being joiner, for conformity to the statute, and that execution be had of such decree in so far as same was affirmed as aforesaid, and that your honor will order said dower to be
139 set aside and allotted to the said Lucy C. Freeman forthwith, in accordance with the said decree; and as in duty bound, &c.

W. R. TRIGG,
CHAS. & GEO. G. SCOTT,
Sol's for P'ts.

Dower.—And in and—the terms & requirements of said final decree the said sheriff was commanded to put the said Lucy C. in the possession of her dower, after same should be so set apart. The said final decree was rendered by said chancery court at a regular term thereof on January 19th, 1875, was duly signed by the chancellor then presiding, & was duly and legally entered on the minutes of said court. Your petitioners further state that the said defendants, Brutus J. Clay, Sr., adm'r as aforesaid, Pattie A. Clay, & Brutus J. Clay, Jr., her husband, appealed from said decree to the supreme court of the State of Mississippi. And that afterwards, to wit, on the 17th day of April, A. D. 1876, the said supreme court rendered a decree in said cause whereby they reversed so much of said final decree as rendered by said chancery court, directed that said

140 Lucy C. should be put in possession of the lands, &c., alloted as her dower, and said supreme court affirmed so much of said final decree as establishes the right of said Lucy C. to her dower in said lands, and said supreme court remanded said cause in order that the allotting of said dower might be proceeded with in accordance with the final decree rendered by said chancery court, and the mandate from the supreme court has been filed with the papers in this cause.

Your petitioners would further show unto your honor & state that since the rendition of said decree in the said supreme court *that* the said Lucy C. has intermarried with said C. L. Freeman, her present husband, & since the rendition of said decree in said supreme court the said Brutus J. Clay, Sr., has departed this life, & no one else has been appointed adm'r of the said estate; and your petitioner further states that all the debts due from said David I. Feild, dec'd, and said C. I. Feild, dec'd, and from their respective estates, have been long since discharged, and that there are no unsatisfied creditors of either of said estates and *that* said lands and all other property belonging to said decedents.

141 THE STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me, C. S. Lobelell, clerk of the chancery court in & for said county, Chas. Scott, one of the sol's for the petitioners in the following petition, who, being duly sworn, states on oath that the within-named Pattie A. Clay & Brutus J. Clay, her husband, are non-residents of the State of Mississippi, and that their residence & post-office is at Richmond, Kentucky; and affiant also states that the within-named David I. Feild is a non-resident of Mississippi, & that his residence & post-office is at St. Louis, Missouri, all of which affiant states to the best of his knowledge, information, & belief.

CHAS. SCOTT.

Sworn to & subscribed before me this 8th day of April, A. D. 1879.

C. S. LOBELELL, *Clerk.*

Endorsed in words & figures as follows, to wit: C. S. Lobelell, clerk.

On the 8th day ——, 1874, the following order for publication was made in words & figures as follows, to wit:

142 THE STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FEILD
vs.
BRUTUS J. CLAY *et al.* } No. 312. In Chancery.

On motion of Lucy C. Freeman & C. L. Freeman, her husband, to revive final decree heretofore rendered in this cause, it appearing from affidavit, filed with the papers in this cause, that Pattie A. &

Brutus J. Clay, her husband, are non-residents of the State of Mississippi, and that they reside and have their post office at Richmond, Kentucky, and that David I. Fields is a non-resident of the State of Mississippi, and that he resides and has his post office at St. Louis, Missouri, it is therefore ordered by the court that the said defendants appear herein on or before the next term of the chancery of Bolivar county, Mississippi, to be held in & for said county, in the town of Rosedale, on the 2nd Monday in May, A. D. 1879, in answer to the petition filed herein by Lucy C. Freeman and C. L. Freeman, her husband, and show cause, if any they can, why said final decree heretofore rendered in the above-styled cause, in so far as same was affirmed by the supreme court of Mississippi, should not be revived, as prayed for in said petition, and same be executed and carried into effect. It is further ordered that a copy of this order be
143 published once a week for four consecutive weeks prior to said 2nd Monday in May, 1879, in the weekly "Leader," a public newspaper printed and published in said Bolivar county, and that the clerk of this court transmit by mail, properly directed & with postage prepaid, a copy of this order to each of said defendants at their respective post offices, as above mentioned.

Ordered in vacation this April 8th, A. D. 1879.

C. S. LOBDELL, *Clerk.*

On the 12th of May, 1879, the following proof was made & *made &* filed in words and figures as follows, to wit:

Personally appeared before me, Geo. P. Melchior, an *an* acting justice of the peace in and for said county, S. C. Blanchard, proprietor of a newspaper printed and published in the town of Concordia, Bolivar county, Miss., called the "The Concordia Leader," who, being duly sworn, deposes and says that the publication of a notice, a true copy of which is hereby affixed, has been made in said paper for five weeks consecutively, to wit:

In vol. No. 9, date April 12th, 1879.
" " " 10, " " 19, 1879.
" " " 11, " " 26, 1879.
" " " 12, " May 3, 1879.
" " " 13, " " 10, 1879.

144 And I further certify that the several numbers of said newspaper containing the above notice have been produced before me and compared with the copy annexed, and that I find the publication thereof have been correctly and truly made.

Witness my hand and seal the 10th day of May, 1878.

GEO. P. MELCHIOR, *J.P.*

S. C. BLANCHARD.

Charges $22.00.

Non-Resident Notice.

STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FEILD
vs.
BRUTUS J. CLAY. } No. 312. In Chancery.

On petition of Lucy C. Freeman and C. L. Freeman, her husband, to revive final decree heretofore rendered in this cause, it appearing from affidavit filed with the papers in this cause that Pattie A. Clay and Brutus J. Clay, her husband, are non-residents of the State of Mississippi, and that they reside and have their post office at St. Louis, it is therefore ordered by the court that the said defendants appear herein on or before the next term of the chancery court of Bolivar county, Mississippi, to be held in and for
145 said county, in the town of Rosedale, on the 2nd Monday in May, A. D. 1879, in answer to the petition filed herein by Lucy C. Freeman and C. L. Freeman, her husband, and show cause, if any they can, why said final decree heretofore rendered in the above-styled cause, in so far as same was affirmed by the supreme court of Mississippi, should not be revived as prayed for in said petition, and same be executed and carried into effect. It is further ordered that a copy of this order be published once a week for four consecutive weeks prior to said 2nd Monday in May, 1879, in the Weekly Leader, a public newspaper printed and published in said Bolivar county, and that the clerk of this court transmit by mail, properly directed and with postage prepaid, a copy of this order to each of said defendants at their respective post offices as above mentioned.

Ordered in vacation this April the 8th, 1879.

C. S. LOBDELL.
Clerk of Chancery Court.

April 12th, 1879.

146 I, C. S. Lobdell, clerk of the chancery court in and for said county, do hereby certify and report that I mailed a copy of the annexed order to each of the defendants named in said order on the 12th day of April, 1879, postage prepaid and properly directed to each of them to the respective post-offices address of each of said defendants as named in said order, and that said copies were each and every one of them placed in the post office by me.

C. S. LOBDELL,
By T. R. McGUIRE.

Sworn to & subscribed to before me this 12th day of Nov., 1879.

JOHN L. GILL,
Clerk of Circuit Court.

Filed May 12th, 1879.

C. S. LOBDELL, *Clerk*,
By T. R. McGUIRE.

THE STATE OF MISSISSIPPI, *Bolivar County:*

To the sheriff of Bolivar county, Greeting:

We command you to summon Jno. A. Scott, guardian of David J. Feild, minor, if to be found in your county, to be and appear before the chancellor of our next chancery court, at a term thereof to be holden at the court-house in the town of Rosedale
147 on the second Monday of May, then and there to answer the petition of Lucy C. Freeman and C. L. Freeman, her husband, and to show cause, if any he can, why the decree rendered in case No. 312, pending in said court, in so far as said decree was affirmed in the supreme court, should not be revived in favor of and in the name of said Lucy C. Freeman, and further to do and receive whatever our said chancery court may consider or decree in this behalf.

Herein fail not and have you then and there this writ.

Witness C. S. Lobdell, clerk of the chancery court of said county, with the seal of said court in the margin hereof, this the 17th day of April, A. D. 1879, the same being the day of the issuance hereof.

C. S. LOBDELL, *Clerk,*
By T. R. McGUIRE, *D. C.*

Endorsed in words & figures as follows, to wit: Executed personally by reading to Jno. A. Scott, guardian of David I. Feild, minor, he waiving copy of the within summons, this 25 day of April, A. D. 1879. R. M. Wilson, sheriff. C. L. Jones, D. S.

148 On the 12th day of Nov., 1879, the following report was filed in words & figures as follows, to wit:

To the Honorable W. G. Phelps, chancellor of the fourth chancery district of the State of Mississippi, & sole — presiding in equity in and for the county of Bolivar:

The undersigned, commissioners summoned by the sheriff of said county, under and by virtue of a certain am't of dower issued by the chancery court of said county in which the said commissioners were directed to allot and set off by metes and bounds to Lucy C. Freeman, as her dower, one-sixth part of the lands, tenements, & hereditaments below mentioned, according to quality & quantity, beg leave to report unto your honor as follows, to wit: That they, the said commissioners, are — related to any of the parties in interest in said dower matter, either by consanguinity or affinity; that they the said commissioners are entirely disinterested, and that after being first duly sworn by the sheriff to faithfully & impartially perform their duty, &c., as the law directs, that they went upon said lands which are more particularly described as follows, to wit, lot- six, seven, & eight in section four, all section five, all fractional
149 section twenty-one; lot five in section twenty-two, and about 351 acres in sections 13, 14, and 15, all in township twenty-one, range nine west, in said Bolivar county, and having gone upon said lands the said commissioners caused the same to be surveyed

and allotted and set off by metes & bounds one-sixth part thereof in quantity and quality to the said Lucy C. Freeman as her dower therein, being one-third of one-half of said lands, and the part so allotted and set off to said Lucy C. Freeman as dower is more particularly described as follows, to wit, lots 6, 7, & 8, in section four, township twenty-one, range nine west, with the building thereon.

The said commissioners further report that they have performed their duty in the premises fairly and impartially, and have in all respects complied with the law, and they now respectfully submit this as their report of their doings & proceedings under & in pursuance of said writ, which report is signed and sealed by us this the 7th day of Nov., A. D. 1879.

RICHARD J. NUGENT. [SEAL.]
R. L. CONNELLY. [SEAL.]
J. H. SINGER. [SEAL.]

150 Sworn to and subscribed before me this 11th day of November, A. D. 1879.

C. L. JONES, *Sheriff.*
By C. R. CAMPBELL,
Deputy Sheriff.

On the 15th day of May, 1879, the following order *pro confessue* was made in words & figures as follows, to wit:

LUCY C. FREEMAN *et al.*
vs.
BRUTUS J. CLAY *et al.* } No. 312.

It appearing to the satisfaction of the court that Pattie A. Clay & her husband, Brutus J. Clay, have been duly and legally cited to appear herein, in answer to the petition filed in this cause by Lucy C. Freeman & C. D. Freeman, her husband, and the said Pattie A. Clay & Brutus J. Clay, her husband, having failed so to do, it is therefore ordered, adjudged, and decreed that said petition & the various allegations thereof to the same are hereby taken as confessed as to them.

Ordered, adjudged, & decreed this May 15th, A. D. 1879.

151 On the 15th day of May, 1879, the following order was made in words & figures as follows, to wit:

THE STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FREEMAN and C. L. FREEMAN, Her Husband,
vs.
BRUTUS J. CLAY *et al.* } No. 312. In Chancery.

The petition of Lucy C. Freeman & C. L. Freeman, her husband, to revive the decree heretofore rendered herein, the said execution thereof, in so far as same was affirmed by the supreme court, and it appearing to the *the* satisfaction of the court that a final decree was

heretofore rendered in this cause, No. 312, by this court, in favor of said Lucy C. Freeman, who was then Lucy C. Feild, establishing her rights to dower in the lands in said final decreement, as set forth therein, which decree was rendered on the 19th day of January, A. D. 1875, and is duly entered on the minutes of this court in minute book "B," page- 216 & 217: and it further appearing from the mandate of the supreme court filed in this cause that said decree, in so far as it established said Lucy C. Feild's right in dower in the lands described in said final decree, was affirmed, and that
152 the said supreme court rendered this *cause* that the allotting of said dower might be proceeded with. And it further appearing to the satisfaction of the court that said Lucy C. Feild intermarried with C. D. Freeman since said final decree was rendered and that said dower has never been allotted, it is therefore ordered by the court, and the court doth hereby order, adjudge, & decree that the prayer of said petition be granted, and that said final decree, in so far as same was affirmed by the said supreme court be, & the same is hereby, revived in the name of the said Lucy C. Freeman, who was formerly Lucy C. Feild. And it is further ordered, adjudged, and decreed that a writ issue to the sheriff of this county commanding him to summon three discreet freeholders of his county as commissioners, not connected with any of the parties to this suit by affinity or consanguinity and entirely disconnected, who, upon oath to be administered by the sheriff, shall allott & set off dower to said Lucy C. Freeman in the lands and in the manner set forth particularly in said final decree, except that the sheriff shall not put her in possession of the lands so set apart to her as dower,
153 but shall leave her to bring her ejectment or other appropriate suit therefor. It is further ordered that said sheriff & commissioners make report of all proceedings herein to the next term of this court. Ordered, adjudged, and decreed this May 15th, A. D. 1879.

W. G. PHELPS,
Chancellor.

On the 4th day of May, 1880, the following order was made in words & figures as follows, to wit:

THE STATE OF MISSISSIPPI, *Bolivar County:*

LUCY C. FREEMAN *et al.*
vs.
BRUTUS J. CLAY *et al.*
} No. 312. In Chancery.

Be it remembered that on this day came on to be heard the motion of the petitioners to confirm the report of the sheriff and commissioners who have proceeded under the former decree of this court to allott and set off to the petitioners Lucy C. Freeman- dower in the lands mentioned in the pleading in this court & in said decree; and it appearing to the satisfaction of the court from the sheriff's return on the writ of dower herein, & from the

report of said commissioners duly & legally summoned
154 by him, to wit, Richard J. Nugent, R. J. Connelly, and J. H. Singer, three disinterested freeholders of this county, that the said commissioners have allot-ed land and set off dower to said Lucy C. Freeman in pursuance of said decree; and it further appearing to the court that in all their acting & doing herein the said sheriff and the said commissioners have proceeded according to law and in strict compliance with the former decreetal orders of this court rendered in this cause; that said writ of dower has been properly executed; that said sheriff and said commissioners have done their duty fairly & impartially; and that there are no exceptions filed to said report, the petitioners having withdrawn their exceptions.

It is therefore ordered by the court, and the court doth hereby order, adjudge, and decree, that the said allotment of dower and the said report, wherein it is shown that lots 6, 7, & 8 in section four, township twenty-one, range nine west, in this county, with the building thereon, were set apart and allotted to said Lucy C. Freeman as her dower, be, & the same are hereby, in all things ratified, approved, and confirmed; and it is further ordered that said
155 report be recorded.

Ordered, adjudged, and decreed this the 4th day of May, A. D. 1880.

W. G. PHELPS,
Chancellor.

On the 29 day of Oct., 1879, the following writ was issued in words and figures as follows, to wit:

To the sheriff of said county, Greeting:

You are hereby commanded forthwith to summons three discreet freeholders of your county as commissioners, not connected with Lucy C. Freeman, C. L. Freeman, Pattie A. Clay, David I. Feild, or Jno. W. Scott, or any of them, either by consanguinity or affinity, the said commissioners to be entirely disinterested, and who, upon oath to be first administered by you, shall go upon the lands hereinafter described, situate in said Bolivar county, to wit, lot- six, seven, and eight in section four, all section five, all fractional section twenty-one, lot five, in section twenty-two, and 351 acres in section- 13, 14, & 15, all in township twenty-one, range nine west; and the said commissioners shall fourthwith allot and set off by mites & bounds to Lucy C. Freeman, as her dower in said lands, one-sixth
156 part of said land, and of the tenements and hereditaments thereunto belonging, according to quality and quan-ity, said dower to be laid off as to work, least amount of injury to the balance of said property, taking in view any further partition of the said lands between the heirs-at-law of D. C. Feild, deceased; but you shall not put the said Lucy C. Freeman in possession of the dower so allotted and set off to her, but shall leave her to bring suit therefor.

You are further commanded to report all your proceedings herein to the next term of the chancery court of said county, together with the report of said commissioners.

This writ is issued in pursuance of a final decree rendered by said chancery court.

Witness my hand and official seal this the 29th day of Oct., A. D. 1879.

C. S. LOBDELL, *Clerk*,
By T. R. McGUIRE, *D. C.*

157 Endorsed by the sheriff in wards and figures as follows, to wit:

Executed the within writ of dower by summoning R. J. Nugent, J. H. Singer, & R. L. Connelly, three competent freeholders of my county, not related to any of the parties in said writ mentioned, either by consanguinity or affinity, and totally disinterested, and said commissioners being first legally sworn by me, as shown by the annexed affidavit, I proceeded with said commissioners to go upon the lands in said writ mentioned, and the said commissioners allot-ed and set off the dower to said Lucy C. Freeman as commanded by said writ, and as shown in this report, which will be filed herewith.

This Nov. 7th, 1879.

C. L. JONES, *Sheriff*,
By C. R. CAMPBELL, *D. S.*

We, the undersigned commissioners, being duly summoned by Chas. L. Jones, sheriff of Bolivar county, to lay off by metes and bounds, the dower interest of Lucy C. Freeman in the estate of D. I. Field & C. I. Field, deceased, do solemnly s*ware* that we will proceed to perform said duty as expressed in the writ of dower,
158 issued by our chancery clerk on the 29th Oct., A. D, 1879, and that we are not connected to any of the parties named in said writ of dower, either by affinity or consanguinity, and will perform said duty as the law directs in such cases, to the best of our knowledge and belief. This 7th day of November, A. D. 1879.

R. J. NUGENT.
J. H. SINGER.
R. L. CONNELLY.

Sworn to and subscribed before me this 7th day November, A. D. 1879.

C. L. JONES, *Sheriff*.
C. R. CAMPBELL, *D. S.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, clerk of the chancery court in and for said county, do hereby certify that [the] foregoing and annexed sixty pages contain a whole, true, and correct copy of all that portion which it purports to copy of the original files or records, and of the original decrees and orders rendered by said courts in a certain cause recently pending in said court, styled Lucy C. Freeman *et al. vs.* Brutus J. Clay *et al.*, No. 312 (formerly styled Lucy C. Feild *et al. vs.*

Sworn to and subscribed before me this 17th day of November, 1882.

A. P. SULLEY,
U. S. Commissioner, Eastern Dist. of Mo.

Filed Nov. 20, 1882.

G. R. HILL, *Clerk.*

The following demurrer to bill was made in words & figures as follows, to wit:

Demurrer of Field.

PATTIE A. CLAY *vs.* LUCY C. FREEMAN *et al.*

And now comes the defendent, David I. Feild, and, without confessing any of the many errors and uncertainties in said bill, now demurs thereto, and say- the same is not sufficient and the
163 complainant is not entitled to any relief, and assigns the following causes of demurrer:

1. Because the alleged claims set up in the bill are stale and because of laches of complainant.

2. No equity on the face of the bill.

3. The claims set up in the bill are barred by the statutes of limitation of this State.

4. Because the statements of said bill are inconsistent and self-contradictory.

5. There is no equity to enforce either the original claim or the bar at said probate court and non-joinder of parties.

6. Whereupon defendent prays judgement whether he should be required to answer said bill.

McKEYHUN & JONES AND
FRANK JOHNSON,
Sol's.

The following exception to bill was made in words and figures as follows, to wit:

Exceptions to Bill.

In the District Court of the United States for the Western Division of the Northern District of Mississippi. To the December Term, 1882.

PATTIE A. CLAY *et al. vs.* LUCY C. FREEMAN *et al.*

Respondents, Lucy C. Freeman and C. L. Freeman, her husband, come and except to the bill in this cause filed against them and against other defendants for the following reasons:

164 1. Because, they say, the said bill contains matter which is impertinent & encumbers the record uselessly, and designates the following passage in said bill as being said matter, to wit, that passage on page 5 of said bill beginning in the sixth line from the bottom thereof with the words "and thereafter, on the 12th day

of December, 1859," and extending to the end of the sixth line from the top on page 6, concluding with the words "this the 10th December, 1859. C. I. Feild."

2. Because they say that the said bill contains matter which is impertinent & encumbers the record uselessly, and designate the following passage in said bill as being said matter, to wit, that passage on page 10 of said bill beginning in the sixth line from the bottom thereof with the words "in the said inventory, the said four notes probated," &c., and extending to the first line on page 11, concluding with the words "by the estate of said D. I. Feild." Whereupon said defendants pray that said passages may be exempt from said bill as impertinent, and they will ever pray, &c.

CHARLES SCOTT & EDW. MAYES,
Sol's for Def'ts.

Filed Nov. 20, 1882.

G. R. HILL, *Clerk.*

And afterwards, to wit, on 27 March, A. D. 1883, the same being an adjourned term of the Dec. term of said court, A. D. 1882, the following order was made in said cause, to wit:

165 *Order on Demurrer.*

PATTIE A. CLAY *et al.*
vs. } 288.
LUCY C. FREEMAN *et al.*

Be it remembered that this cause came on this day for hearing upon the demurrer in the bill and the same was *agreed* by counsel before the court, and thereupon, for sufficient reason, this cause is taken under advisement by the court, and it is agreed between the parties that upon a determination by the court a decree herein may be rendered in vacation as of this term.

Introductory Decree for an Ac., &c.

UNITED STATES OF AMERICA,
Western Division of the Northern District of Mississippi:

In the District Court of the United States. At June Term, 1883.

PATTIE A. CLAY *et al.*
vs. } 288.
LUCY C. FREEMAN *et al.*

Be it remembered that this day came on to be heard the above-entitled cause on the bill, exhibits, and the demurrers thereto of Lucy C. Freeman & her husband, & of David I. Feild, the said two demurrers having been argued together, and in vacation, by consent of counsel on all sides, & the court having taken the same under consideration until now, & being now fully satisfied in the premises, the court doth hereby order, adjudge, and decree that the said de-

murrer to said bill, in so far as they apply to all such parts of said bill as seeks an accounting by any of the defendants to said bill of the alledged partnership dealing of said D. I. Feild & Co., and as such to enforce the alledge- decree of sale rendered in the probate court of Bolivar county, Mississippi, on the — day of —, 1869,
166 and as such to have the bill made by complainant, Pattie A. Clay, at the sale of 20th December, 1869, declared a charge upon the lands in said bill described, be, and the same are hereby, sustained; and that the said bill be, as to all those parts thereof, and the same is hereby, dismissed.

And it is further ordered, adjudged, & decreed that said demurrers, in so far as they apply to such parts of said bill as seeks to have the accounts of rents and profits due Mrs. Lucy C. Freeman settled in this cause, in order to avoid multiplicity of suits, be, and the same are hereby, overruled; and said bill, for those purposes, and those alone, be, and the same is hereby, retained. And it is further ordered, adjudged, and decreed that this cause be referred to George R. Hill, clerk and master of this court, he being selected by the counsel herein to take and state, first, an account of the rents and profits due by defendant, Pattie C. Clay, to Mrs. Lucy C. Freeman, on account and because of her occupation & detention of the dower lands of said Lucy C., as detailed in said bill, from the 1st day of January, 1870, to the present time *severally*, on account of the rents and profits due by defendant, Pattie C. Clay, to David I. Feild, because of her occupation of the lands of said David (not including the dower lands of said Lucy C. Freeman), as detailed in said bill, from the 1st day of January, 1870, to the present time, and that the said clerk and master do report said accounts to this court at the next term hereof; and for the better stating of said accounts,
167 and the discovery of the matters to be investigated therein, the said master may use all evidence heretofore taken in said cause, and may take such other competent and lawful testimony as he may see proper. Ordered, adjudged, & decreed this 19th July, 1883.

R. A. HILL, *Judge.*

Filed and ent. M. 10, pg 144, July 19, 1883.

G. R. HILL, *Clerk.*

And afterwards, viz., on the 7th Dec., 1883, the following statement was made in words and figures as follows, to wit:

Cross-Ac.

In the District Court of the United States for the Northern District of Mississippi, Western Division. In Equity.

PATTIE A. CLAY *et al.*
vs.
LUCY C. FREEMAN *et al.*
} 200–288.

The undersigned, clerk of said court, who was, by decree of said court, appointed a commissioner to take and state an account of the above entitled cause between Mrs. Pattie A. Clay and Mrs. Lucy C.

Freeman, respectfully reports that he gave due notice to the solicitors of the parties interested in said account of the time and place
168 of taking the same, and that from the testimony on file in said cause and presented to him on the 6th day of December, 1883, at his office in Oxford, Miss., he proceeded to take and state said account, which is hereto attached and made a part of his report, as follows:

169 Mrs. Pattie A Clay to Mrs. Lucy C. Freeman, Dr.

1871.				
Jan.	1.	To rent of dower in Content plantation for the year 1870, (⅓ of $3,750)	1,250 00	
1884.				
Jan.	1.	" interest on the same to date at 6 per cent	975 00	
1872.				
Jan.	1.	" rent of dower in Content plantation for the year 1871, (⅓ $3,750)	1,250 00	
1884.				
Jan.	1.	To interest on same to date at 6 per cent	900 00	
1873.				
Jan.	1.	" rent of dower in Content plantation for the year 1872, (⅓ $3,750)	1,250 00	
1884.				
Jan.	1.	" interest on same to date @ 6 per cent	825 00	
1874.				
Jan.	1.	" rent of dower in Content plantation for the year 1873 (⅓ $3,250)	1,083 33	
1884.				
Jan.	1.	" interest on same to date at 6 per cent	649 99	
1875.				
Jan.	1.	" rent of dower in Content plantation for the year 1874, (⅓ $1,000)	333 33	
1884.				
Jan.	1.	" interest on same to date at 6 per cent	179 91	
1876.				
Jan.	1.	" rent of dower in Content plantation for the year 1875 ⅓ of $3,250)	1,083 33	
1884.				
Jan.	1.	" interest on same to date at 6 per cent	519 92	
1877.				
Jan.	1.	" rent of dower in Content plantation for the year 1876, (⅓ of $1,350)	450 00	
1884.				
Jan.	1.	" interest on same to date at 6 per cent	189 00	
1878.				
Jan	1.	" rent of dower in Content plantation for the year 1877, (⅓ $3,066 66)	1,022 22	
1884.				
Jan.	1.	" interest on same to date at 6 per cent	367 00	
1879.				
Jan.	1.	" rent of dower in Content plantation for the year 1878, (⅓ $3,066 66)	1,022 22	
1884.				
Jan.	1.	" interest on same to date at 6 per cent	306 65	
1880.				
Jan.	1.	" rent of dower in Content plantation for the year 1879, (⅓ $3,066 66)	1,022 22	
1884.				
Jan.	1.	" interest on same to date at 6 per cent.	245 32	
		By amount carried forward		$14,925 42
			14,925 42	14,925 42

170		To amount brought forward			14,925 42
		CR.			
1871.					
Nov.	30.	By ⅓ $102.56, taxes paid Nov. 30th, 1871			34 18
1884.					
Jan.	1.	" interest on same to date at 6 per cent			24 77
1872.					
Jan.	5.	" ⅓ $21.99, taxes paid June 5th, 1872			7 33
1884.					
Jan.	1.	" interest on same to date at 6 per cent			5 07
1872.					
Apr.	6.	" ⅓ $158.20, taxes paid April 6th, 1872			52 73
1884.					
Jan.	1.	" interest on same to date at 6 per cent			37 09
1872.					
Nov.	26.	" ⅓ $206.46, taxes paid Nov. 26th, 1872			68 82
1884.					
Jan.	1.	" interest on same to date at 6 per cent			45 80
1873.					
Mar.	26, 27.	" ⅓ 629.61, taxes paid 26th & 27th M'ch, 1873			209 87
1884.					
Jan.	1.	" interest on same to date at 6 per cent			135 47
1874.					
Jan.	20.	" ⅓ $625.37, taxes paid Jan. 20th, 1874			208 45
1884.					
Jan.	1.	" interest on same to date at 6 per cent			124 35
1874.					
April	2.	" ⅓ $168.20, taxes paid to April 2nd, 1874			56 06
1884.					
Jan.	1.	" interest on same to date at 6 per cent			32 76
1876.					
Feb.	22.	" ⅓ $637.69, taxes paid Feb. 22, 1876			212 56
1884.					
Jan.	1.	" interest on same to date at 6 per cent			99 90
1876.					
Dec.	4.	" ⅓ $621.85, taxes paid Dec. 4th, 1876			207 28
1884.					
Jan.	1.	" interest on same to date at 6 per cent			87 91
1878.					
Jan.	7.	" ⅓ $335.01, taxes paid Jan. 7th, 1878			111 67
1884.					
Jan.	1.	" interest on same to date at 6 per cent			41 88
1879.					
Jan.	4.	" ⅓ $352.72, taxes paid Jan. 4th, 1879			117 57
1884.					
Jan.	1.	" interest on same to date at 6 per cent			35 19
1879.					
Dec.	14.	" ⅓ $428.23, taxes paid Dec. 14th, 1879			142 74
1884.					
Jan.	1.	" interest on same to date at 6 per cent			34 60
		DR.			
1872.					
April	6.	To ⅓ of $39.55, discount on bonds		13 18	
1884.					
Jan.	1.	" interest on same to date at 6 per cent		9 26	
"		" By balance due Jan. 1st, 1884			12,813 76
1884.				$14,947 86	14,947 86

Jan. 1. To am't due Mrs. Clay Jan. 1st, 1884, $12,813.76.

All of which is respectfully submitted by—

G. R. HILL, *Clerk.*

Dec. 7th, 1883.

Filed Dec. 7th, 1883.

G. R. HILL, *Clerk.*

171 And afterwards, viz, March 6th, 1884, answer was filed in words & figures following, to wit:

Answer of D. I. Field.

U. S. District Court, Northern District of Mississippi.

Mrs. PATTIE A. CLAY *vs.* D. I. FIELD, Mrs. FREEMAN, *et al.*

The respondent, D. I. Feild, by his solicitor, for answers to so much of the bill in this cause as he is advised it is necessary to answer, says that the decree of this honorable court sustaining the demurrer of this defendent, and of his codefendent to the bill of complaint, and retaining the bill for the sole purpose of taking and stating an account between the complainant on the one hand and the defendents on the other, of the rents of said land and the matter of improvements claimed by the complainant:

Accordingly the respondent says that he is the owner of the title paramount to one undivided half of said plantation & lands described in the said bill, subject to the dower estate or interest of his codefendent, Mrs. Freeman, and since the decree of this honorable court on the said demurrer to the bill of this complainant in the ejectment suit described and mentioned in the bill this defendent has recorded a judgment for his estate or interest in said lands; and this respondent now insists that the rent due

172 him since the sale of said lands at the probate court sale described in the bill amount- to $10,000, and does not admit any statements or averments of the bill in respect to the improvements or rents, and that the fair measure should be the fair and reasonable rental value of said lands with annual rents, and not the actual profits of complainant; and on the other hand the improvements ought to be limited to those that are valuable and permanent; and — these questions be now submitted to the court, praying that he may have a decree of this honorable court for such sum for rents as may be justly & equitably due to him for the whole time of the complainant's occupancy, from the date of said probate court sale up to the date of the hearing.

FRANK JOHNSON,
Sol'r for Def't, D. I. Feild.

Affidavit to this answer waived, and this is to be taken as in all respects a formal answer to the bill.

Filed March 6, 1884.

G. R. HILL, *Clerk.*

And afterwards, viz., the following was made in words & figures as follows, to wit:

Agreement.

Mrs. CLAY *vs.* D. I. FEILD.

173 I am willing to waive a reference to a commissioner, and for the court to take the whole case on pleadings and proof, and render a decision and make a decree fixing the state of the

accounts on the question of rents and improvements; and I am willing that it shall be submitted, with leave to me, in any reasonable time, to file a brief or written argument.

March 5, 1884.

FRANK JOHNSON,
Sol'r for D. I. Feild.

And afterwards, on the 6th March, 1884, the same being a day of the adjourned term of the Dec. term of said court, A. D. 1883, the following final decree was entered in words and figures as follows, to wit:

Final Decree.

UNITED STATES OF AMERICA, *State of Mississippi:*

In the Dist. Court of the the Northern Dist. of Miss., Western Division. At the December Term, 1883.

PATTIE A. CLAY *et al.*
vs.
LUCY C. FREEMAN *et al.* } 288.

Be it remembered that this day came on to be heard the entitled cause, and, the parties appearing in open court, by consent the account herein filed by the master is withdrawn and the decree of reference hereinbefore rendered is set aside; and, counsel for complainants declining to avail himself of the offer of the court to retain the bill for the purpose of stating an account, it is ordered,
174 adjudged, and decreed that said bill be, and the same is hereby, dismissed, and that complainants pay the cost, for which let execution issue; and thereupon complainants prayed an appeal to the Supreme Court of the United States, which is granted upon their entering into bond in the penalty of one thousand dollars, with two securities, conditioned according to law.

Ordered, adjudged, and decreed this the 6th day of March, 1884.

R. A. HILL, *Judge.*

Filed March 6th, 1884.

G. R. HILL, *Clerk.*

And afterwards, on the 25th of July, 1884, a bond was filed in words & figures, as follows, to wit:

Bond on Appeal.

In the District Court of the U. S., Western Division, Northern District of Mississippi.

PATTIE A. CLAY *et al.*
vs.
LUCY C. FREEMAN, *et al.* } No. 288.

Know all men by these [presents] that we, Pattie A. Clay and Brutus J. Clay, her husband, principals, and William L. Nugent

and Thos. A. McWillie, securities, are held & firmly bound unto Lucy C. Freeman and David I. Feild in the penal sum of one thousand dollars, to the payment of which, well and truly to
175 be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 24th day of June, A. D. 1884.

Whereas the above-bound Pattie A. Clay hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the district court of the United States for the western division of the northern district of Mississippi, on the 6th day of March, A. D. 1884, whereby the bill in said cause was dismissed: Now, therefore, the condition of this obligation is such that if the above-named Pattie A. Clay shall prosecute her said appeal to effect, and pay all cost if she shall fail, then this obligation to be void; otherwise to remain in full force & action.

PATTIE A. CLAY. [SEAL.]
BRUTUS J. CLAY. [SEAL.]
WM. L. NUGENT. [SEAL.]
THOS. A. McWILLIE. [SEAL.]

Sealed and delivered as to principals in presence of—
S. S. PARKS &
R. R. BURNAM.

Sealed and delivered as to securities in presence of—
—— ——.

I approve the above bond and the sufficiency of the securities in connection with the bank stock filed with the clerk as collateral security thereto this 24 day of July, 1884.

R. A. HILL, *Judge.*

Filed July 25, 1884.

G. R. HILL, *Clerk.*

176 *Citation.*

UNITED STATES OF AMERICA,

The Western Division of the Northern District of Mississippi:

To Lucy C. Freeman and David I. Field, Greeting:

You are hereby cited and admonished to be and appear before and at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to an appeal taken from the final decree of the district court of the United States for the western division of the northern district of Mississippi, rendered on the 6th day of March, 1884, in a cause therein pending, wherein Pattie A. Clay and Brutus J. Clay, the appellants in said appeal, were complainants, and you, the appellees therein, were defendants, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. A. Hill, judge of the said district court

of the United States for said western division of the northern district of Mississippi, this 25th day of July, in the year of our Lord one thousand eight hundred & eighty-four.

[Seal United States District Court, Northern District, Miss.]

R. A. HILL, *Judge.*

177 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before me, the undersigned, United States commissioner in and for said district, Thomas A. McWillie, who, being first duly sworn, deposes and says that on this 31st day of July, A. D. 1884, he handed to Frank Johnson, Esq., attorney of record of the within-named appellees, Lucy C. Freeman and David I. Field, a full, true and perfect copy of the within writ.

THOS. A. McWILLIE.

Sworn to and subscribed before me this 31 day of July, 1884.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

JAS. M. McKEE,
Clk & Commissioner U. S. Circuit Court,
So. Dist. of Miss.

[Endorsed:] No. 288. In Equity. Pattie A. Clay *et al. v.* Lucy C. Freeman *et al.* Citation.

178 UNITED STATES OF AMERICA, } ss:
Northern District of Miss., }

I, G. R. Hill, clerk of the district court of the United States for the western division of the northern judicial district of Mississippi, hereby certify that the foregoing pages of this record contain a true & perfect transcript of all papers & proceedings & orders, &c., &c., purporting herein to have been copied as fully as appears from the originals on file and of record in my office in said cause.

In testimony whereof I hereunto set my hand and affix the seal of said court at my office in Oxford, in said district & division, on this the 19th day of August, 1884.

[Seal United States District Court, Northern District Miss., Western Division.]

G. R. HILL, *Clerk.*

Cost of preparing record for Supreme Court, paid by appellant, $58.60.

G. R. HILL, *Clerk.*

Endorsed on cover: N. Mississippi D. C. U. S. No. 677. Pattie A. Clay, appellant, *vs.* Lucy C. Freeman and David I. Field. Filed 11th October, 1884.

118-97

Office Supreme Court U. S.
FILED.
DEC 3 1885
JAMES H. McKENNEY.
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1885.

PATTIE A. CLAY AND HUSBAND, APPELLANTS,

vs.

LUCY C. FREEMAN, ET ALS., APPELLEES.

Appeal from the District Court of the United States, for the Northern District of Mississippi In Equity.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1885.

PATTIE A. CLAY AND HUSBAND, APPELLANTS,

VS.

LUCY C. FREEMAN, ET ALS., APPELLEES.

Appeal from the District Court of the United States, for the Northern District of Mississippi In Equity.

ARGUMENT OF WILLIAM L. NUGENT FOR THE APPELLANT.

The case at law between the parties has recently been determined by this court. The sale of lands of D. I. Field [redacted], under the decree of the probate court of Bolivar county, Mississippi, was void, and the appellant was unable to plead the statute of limitations of one year because she had not actually paid the purchase money for the property. The bill in this case was brought at a time when, because of the loss of the records of Bolivar county, it could not be ascertained that the sale had been reported to or confirmed by the court. An office copy of the record having afterwards been discovered it was shown thereby that the sale had been confirmed as appears from

the findings of fact in the case at law. No injunction was ever issued in this case, but a demurrer was interposed to the bill.

The court below, in deciding the case, held that the proceeding in the probate court of Bolivar county was a nullity and that it could not be availed of for any purpose. I here append the opinion of the learned district judge:

"It is clear to my mind that the probate court had no jurisdiction to settle the indebtedness from D. I. Field if any existed, and to decree a sale of the interest of which D. I. Field died seized in the lands for its payment.

"The debt, if any remaining due, is admitted to be a partnership debt and could only be ascertained by a settlement between the partners, or the survivor and the administrator of the deceased partner, or by an account and decree in a court of equity.

"Consequently the whole proceedings in the probate court are a nullity, and as though they had never been.

"Upon the death of D. I. Field the partnership was dissolved, and the legal title to the partnership lands became vested in C. I. Field, and D. I. Field, Jr., as tenants in common, subject to the dower rights of the widow of D. I. Field in his portion. D. I. Field's portion being further liable for any debts due from the firm, and to any balance due C. I. Field upon a settlement of the partnership accounts.

"C. I. Field, as surviving partner, had the right, and it was his duty to take possession of all the partnership property, real and personal, and use the same for the payment of the partnership liabilities to others, and the payment of any balance due himself as such partner. The possession and control of the partnership property by the administrator of D. I. Field must be considered as the possession of C. I. Field as such surviving partner, and he charged with the winding up of the partnership business up to the time of his death in 1869; he had the right as such partner, to sell the real, as well as personal estate

belonging to the partnership, so far as the same was necessary to discharge the amount due him, without any decree of any court, and then to account to the administrator, and heir-at-law, of D. I. Field; or the administrator of D. I. Field might have filed a bill for an account of the partnership; or C. I. Field might have filed his bill against the administrator and heir-at-law of D. I. Field for the same purpose, but from the statement of the bill none of these steps were taken. The debt claimed to be due, is first liable to the payment of the debts of C. I. Field, if any; it is a personal obligation, and goes to the administrator, unless upon an allegation that no debts are due from the estate of C. I. Field; but the main question is, can the complainant, as the heir of her father, at this late day, call upon the heir at-law, of his deceased partner for an account of the partnership after his father had the partnership property in his hands, and liable to account for it for ten years, without taking any steps for a settlement of the partnership accounts? The probate of the notes without more was a mere nullity, and as already stated, that court was without jurisdiction to adjust and settle the matters of account between them, hence the attempted sale and purchase under its decree did not stop the statute of limitations or arrest the effect of laches in prosecuting the claim, and the parties now stand as though the same had not been had. Since that time up to the filing of the bill more than ten years elapsed, without any steps being taken either by the administrator of C. I. Field, who was the proper person to do so, or by the complainants, to assert and enforce the alleged indebtedness. This neglect of the administrator and complainants arose, no doubt, from the fact that they relied upon the proceedings in the probate court, but this mistake upon their part cannot prejudice the defendants in their rights, or place them in a more unfavorable condition than they would have been had they not taken place.

"The alleged indebtedness is not a personal demand against either of the defendants, so that their absence

from the State presented no bar in the way of the enforcement of this demand, or the necessary accounting to ascertain whether or not anything was due, for if necessary parties, they could have been brought in by publication.

"The reason that courts of equity refuse to enforce stale demands is, that during a long space of time, from loss of documentary evidence, death or loss of memory of those having knowledge of the transactions, places the party charged at great disadvantage. No more forcible illustration of the necessity of the rule stated, need be had than this case presents. It may be safely inferred from the fact that C. I. Field took no further steps in relation to this claim for so long a time, that he did not intend to do so. D. I. Field died in the fall of 1859, before the crop of that year was realized; soon after this the claim was probated, and how much might have been paid out of the partnership property, or from the rent of the lands, it is impossible for the defendant now to show.

"This evidence it was the duty of C. I. Field to have produced, which has not been done. and the probability is, for the reason that he did not intend to assert it further than the satisfaction already received. The questions arising upon the statute of limitations have been ably presented by the learned counsel on both sides, but need not be considered, as I am satisfied that under the rule of courts of equity, declining to enforce stale demands, the demurrer must be sustained to the bill, so far as it seeks to enforce the claim as stated, either under the probate proceedings or otherwise."

The facts necessary to a fair understanding of the case are about these:

In the year 1855, D. I. Field and C. I. Field, his brother, purchased a plantation and slaves in Bolivar county and began the business of planting cotton, clearing and improving their estate and adding to it, as equal partners. The original investment, by each, was $18,000, and the property acquired was worth about $60,000. It being

necessary to provide means for paying the purchase money for the property, over and above what was realized from crops, C. I. Field advanced it, and in December, 1856, took the memorandum note of the firm for the amount advanced, $7,385.31. On 20th March, 1857, he made a like advance and took the firm note for $5,666.66. During the year 1859 he advanced other sums and took a like note for $1,389.29. In June, 1858, he made an advance of $1,500 and took a like note. There was no payment of these notes and no settlement had of the partnership matters.

D. I. Field died in September, 1859. E. H. Field qualified as his administrator in October, 1859, and C. I. Field probated his claim against the estate December 12, 1859. As by the terms of the partnership agreement D. I. Field was conducting the partnership business, his administrator took possession of the joint property and business, until flagrant war arrested him, and the slaves of the firm were taken for safety to Texas.

In the year 1866, the ex-slaves of the firm were brought back to the farm and efforts were made to renew planting operations, which failed. The place was, therefore, rented by E. H. Field, until he retired from the administration, early in 1867, and prior to July, 1867, C. I. Field, surviving partner, qualified as administrator of his deceased brother. He died shortly afterwards, and in October, 1867, Brutus J. Clay qualified as administrator of both partners then deceased, and leased the plantation from year to year. In the year 1869, he began proceedings in insolvency in the probate court of Bolivar county, to sell D. J. Field's interest in the plantation to pay his half of the firm debt to C. I. Field, all other the debts of the partnership and the individual debts of D. I. Field having been paid. After proper proceedings a decree was entered and the land ordered to be sold prior to the adoption of the late constitution. After the adoption of the constitution and the *abolition of the Probate Court*, the lands were advertised and sold under said decree, Mrs. Clay became the purchaser at $6,000, gave the administrator a receipt for the amount,

paid the costs and was let into possession under her deed from the administrator. The sale was never reported, or if reported, was never confirmed either by the probate or by the chancery court.*

Mrs. Freeman began proceedings several years afterwards, and her dower was assigned. Defendant Field, on attaining his majority in 1880, commenced his action of ejectment, claiming back rents, and Mrs. Freeman by her bill, begun about the same time, is claiming back rents for her dower. So that two parties are, by different and independent proceedings, claiming rent for the same land. Shortly after the death of D. I. Field his widow and son removed out of the State, took up their permanent residence in Missouri, and have never returned to Mississippi.

In this exigency the bill is filed and the court asked to adjust rights and equities. The complainant is met by a demurrer, and the grounds pressed in argument are: 1st, That the claim is barred, and 2d, that it is stale and inequitable.

The demurrer was sustained and the bill dismissed. We now assign for error the action of the court below in sustaining the demurrer and dismissing the appellant's bill. It should have been sustained and the cause retained for a complete adjustment of the equities between the parties effectuated.

ARGUMENT.

I.

D. I. Field and C. I. Field were partners. During the *existence of the partnership* neither could sue the other at law. Before any such suit could be brought there must be a final settlement, a balance struck, the amount due by one to the other fixed, and a promise to pay the balance, and a dissolution of the firm. Balances struck preparatory to a final account are not sufficient to form the subject matter of an action at law. Until this is done, the remedy is in equity.

NOTE.—The sale was in fact reported to and confirmed by the court as shown in the case at law between the parties recently decided by the court.

Burns v. Nottingham, 60 Ills., 532;
Sprout v. Crowley, 30 Wis., 187;
Dickinson v. Granger, 18 Pick, 317;
Scott v. Carrute, 50 Mo., 20;
Chase v. Garvin, 19 Me., 211;
Burley v. Harris, 8 N. H., 233.

This rule is never departed from, except when a balance or debt, is distinctly *separated* from the partnership accounts, either by their entire settlement, or by a settlement which may be partial as to the affairs of the partnership, but complete as to this debt between the partners. As one partner can sue the other on a cause of action which never pertained to the partnership, it seems quite as certain that he should have his action for a cause which he can show to have been *cut out* from the partnership by himself and his partner jointly, and to be as completely separated from it as if there had never been any connection between them.

Parsons on Partnership, *283, 284.
Ivy v. Walker, 58 Miss., 253.

An illustration of this exception is found in the case of *Russell v. Gromes*, 46 Mo., 410, where there was an adjustment of the partnership accounts and a division of the assets, and one partner collected money on claims allotted to the other. The claims had become the individual property of the plaintiff, and he had acquired a separate property in them against his partner, for their full amount. But if the adjustment of the matter would involve investigation and settlement of partnership accounts no relief would have been given even in this case. The cases, and the weight of authority, agree that there must be a settlement, a balance struck, showing the amount due by one to the other partner, and an express promise to pay,—though, as to the last, very respectable courts allow an implied promise.

Casey v. Brush, 2 Carnes, 293;
Murray v. Bogart, 14 Johns, 318;

Patterson v. Blanchard, 6 Barb., 537;
Norris v. Bigelow, 44 N. H., 376;
McGehee v. Dougherty, 10 Ala., 863.

And it is more satisfactorily put in *Hunt v. Morris*, 44 Miss., 316, where the court, Simrall, Judge, delivering the opinion, say: "When partners have settled their copartnership business, and a balance in money is ascertained to be due from one to the other, an action at law will lie for such balance. So, also, if an actual separation of the partnership effects is made, so that certain specific articles of property are assigned as the share of each, an action at law will lie in favor of the one against the other in respect to such articles. This doctrine is upon the premise that, in the first case, the money balance has been individualized, separated from the copartnership interests and made the separate debt of one to the other. The same result follows in the second case, where there has been a division of the partnership property. In effect, each has quit-claimed or released his interest to the other, each has assigned his right to the other. To the extent of the settlement and division, there has been a dissolution of the partnership relation. So long as the community relation subsists, neither party has a remedy at law in respect to the joint assets. When the community is severed, though partially, touching particular assets, so that by agreement and consent, a separate ownership is established in one, then legal remedies are open to him."

The rule as stated in this State is, that one partner cannot sue another at law for a sum of money due on account of the partnership, unless it be an ascertained balance of a separate account, or a general balance of all accounts.

Bonnaffe v. Feuner, 6 S. & M., 212;
Murdock v. Martin, 12 S. & M., 660;
Thornton v. McNeil, 1 Cushman, 369;
Sturgis v. Swift, 3 George, 239;
Anderson v. Robertson, 3 George, 241;
Morgan v. Nunes, 54 Miss., 308;
Ivy v. Walker, 58 Miss., 253.

It must be a balance ascertained *to be due by the one to the other* as to which the community relation has been destroyed, and there must be an acknowledgment of that much as due from the one to the other partner. Indeed there could be no other rule adopted without the production of insurmountable difficulties and the disruption of all such relations as the idea of a partnership necessarily involves. The same may be said as to the surviving partner and the administrator of the deceased partner. No action other than a proceeding in equity for an account and settlement because of the *dissolution wrought by death* will lie in such case.

White's adm'r, v. Waide, Walker, (Miss..) 263;
Gleason v. White, 24 Cal., 258.

If we are correct in our views of the law, there is nothing in this cause to bring it within any of the exceptions above stated, and there could have been no suit brought by C. I. Field against his brother on the partnership notes because of the actual existence of the partnership and debts for which the joint property was bound, and each partner personally responsible.

2 Cranch, *supra;*
Lamolere v. Cage, 1 Wash, 435;
Goldsborough v. McWilliams, 2 Cranch, C. Ct, 40.

II.

D. I. Field died on the 11th September, 1859, and E. H. Field qualified as his administrator in October, 1859. The relations between the partners were thus brought to a close and C. I. Field was entitled to the posession and use of the property as surviving partner and trustee. The legal title enured to him, but the beneficial interest in it appertained to him and the legal representative of D. I. Field, who were tenants in common. The survivor had the right to sell the partnership property for partnership purposes. He could transfer the assets for payment of the firm debts, but could not apply them to his own. He could actually carry on the business with the partnership

property, as here, though the profits would belong to the firm.

Mayson v. Beazley, 27 Miss., 106;
Stewart v. Burkhalter, 28 Id., 396;
Scott v. Tupper, 8 S. & M., 280;
Bank of Port Gibson v. Baugh, 9 Id., 290;
Parsons' Partnership, * pp. 440, 441, 442, 444.

We are not now considering the propriety of carrying on the farming operations during the years 1860 and 1861; that is a question which can only arise on answer and proof at the hearing. The survivor could do it, and he could allow the representative of the deceased partner to do it, and by concurrent consent they might do it together, and it may have been eminently wise and proper in view of the other indebtedness of the firm and the solvency of the survivor. Parsons on Partnership, * pp. 445, 446. Particularly is this the case when the representative of the deceased partner *did not require* a sale, but directly participated in the continuance of the business, and received and expended all its fruits. It would seem, at least, to be true, that while this mode of settlement continued, there could be no such thing as a running of the statute of limitation or adversary relations to provoke its commencement. There were firm debts to third parties to be paid off, and they were paid off as the result of the course of dealing now complained of. Millard v. Ramsdell, Harr., Mich., 373; Fenn v. Bolles, 7 Abbott, Pr. 202.

The right to proceed for a settlement of the partnership accounts, the marshalling of its assets and the payment of its debts *first* accrued to the surviving partner, if at all, after the death of D. I. Field, and not during his lifetime.

If it be said that C. I. Field could have filed his bill in equity to recover on the notes in the lifetime of D. I. Field, the answer is obvious. No such proceeding could have been instituted while the partnership continued, and no bill other than one for a *dissolution of the firm*, a settlement of accounts, and a marshalling of assets could have been brought.

Stone v. Fonse, 3 Cal., 294;
Nugent v. Locke, 4 Id., 320.

There is, also, another important consideration: C. I Field, being a creditor of the firm of which he was a partner, could not coerce payment of his demand until the firm debts were all paid. He could only be entitled to be paid out of the surplus, if any sufficient, and if not, the other member of the firm or his estate would be liable to contribute its share.

Simrall v. O'Bannons, 7 B. Mon., 608.

He could not have exhibited his bill for settlement, the marshalling of assets and payment of debts against the representative of his deceased partner. It was his own duty to pay the debts to others *first*; to himself in the *last resort*. He had the title as survivor, and after 1860, the only unpaid debt in his own hands as creditor. He united in himself both the character of debtor and creditor, being in one capacity *owner*, and in the other creditor, having a subordinate *charge upon the property*. The right to sue for a settlement only appertained to the administrator of D. I. Field. He could have demanded a sale of the property to pay debts, or he could have acquiesced in the further conduct of the business for the *purpose of paying debts*, which he did. It is a solecism to speak of there being any bar to our rights in such case. We had, however, set out to fix the period of time when the statute began to run on the hypothesis of the defendants, and we proceed.

E. H. Field, having qualified as administrator in October, 1859, could not have been sued until nine months afterwards by the express provisions of the Code of 1857, and this would fix the time at which he could have been impleaded to some time in July, 1860. The statute of limitations was then set in motion, if at all, as we have fully shown.

The case of Spann's Adm'r v. Fox, Executor, Georgia Decisions, p. 7 *et seq.*, is a valuable authority in support of these views. It is well reasoned, and the result of a

thorough review of all the cases then known; and while it was rendered in 1842, it is not believed that the law has undergone any change. The case is this: John Fox, during the revolutionary war, was one of the loyalists, and James Spann, his brother-in-law, was one called a whig, and after the war ended, Fox returned to Georgia, and with his brother-in-law, went into merchandizing at Augusta, under the name of James Spann & Co., in the year 1792 or 3. The partnership continued until the death of Spann, about the year 1794, making about two or three years in which the business was carried on; but it was not shown what amount of capital each furnished. After Spann's death, Fox, as surviving partner, continued the business without any change in the books, or any settlement of the partnership concern. Nor did the books show that any change of the business had been made after the death of Spann, except a letter written by Fox to one of his mercantile correspondents, in 1795, that in future he should direct his letters to John Fox & Co. After Spann's death, his widow continued to reside in Augusta, and her brother, John Fox, and his clerks boarded with her. After two years, she removed to South Carolina, and resided for many years on a plantation of John Fox. Spann, at his death, left four children—a son and three daughters—who, after their removal, continued to reside in Carolina; but in the year 1810, James Spann, son and youngest child, returned to Augusta and resided there for some years. At the death of James Spann, Sr., the eldest child was about five or six years of age, and in 1810 must have been twenty-one years of age.

In 1794, John Fox and Mrs. Spann applied to the register of probates, in Augusta, for letters of administration on the estate of James Spann, deceased, and paid the fees of administration, but no further proceedings were to be found on record in the Ordinary's office. There was no evidence of any destruction of the records of the Ordinary's office, and no evidence of the administration on James Spann's estate until administration was taken out

by the complainant, James Gardner, in 1838. The books and receipts and other papers belonging to James Spann & Co., and subsequently continued by John Fox, were drawn from Fox's executors by notice, and they were given in evidence to the latest period of their connection with the dealings of James Spann & Co. John Fox continued to reside in Augusta to his death in 1836, left a will, and the defendants are his executors. The bill was filed in 1838 by Spann's administrator against them for an account, and the issue as to amount due complainant was submitted to a jury, who estimated it to be $103,733.04. The defense was lapse of time, or equitable bar. A motion for a new trial was overruled.

The court refused to charge the jury that the claim of the complainant was not barred by the lapse of time from 1793, when Spann died, till 1838, when the bill was filed; and that was the error relied on. In commenting on this charge, the Superior Court say: "Lapse of time applies by way of evidence, and a court of equity considers it as furnishing proofs of the satisfaction of the demand. If, after a long lapse of time, say twenty years or more, a party who was *competent to sue* and a defendant *against whom suit could be brought*, were to lie by without rendering to the court a sufficient reason for not pursuing their remedy within the time prescribed by the statute of limitations, if within such statute, or within the time usually assumed by courts of equity, when the demand is purely of an equitable nature, and which is generally twenty years—in such cases the court and jury would enforce the equitable bar by lapse of time, and this lapse of time operates by way of evidence, and when the statute of limitations is applicable to any demand sought to be enforced in equity, it is applied for the protection of those who have remained in possession under a title supposed to be good."

Proceeding further to inquire into the question, the court, on page 11 say: "The cause of action, either at law or in equity, did not accrue until the claimant could legally sue.

* * * * No cause or right of action arose or accrued in the life-time of James Spann against his copartner, John Fox, as is contended by the complainant. There is no evidence that any dispute had arisen between the partners, but, on the contrary, they were doing a profitable business in merchandise, and were making large profits, and the partnership was dissolved alone on account of the death of James Spann. * * * The statute never did commence to run against James Spann in his life-time. * * * The children of James Spann, as such, could not sue John Fox in his life-time. * * * The surviving partner was a trustee to account and pay over a moiety of the net profits to the administrator of the deceased partner. * * * He was not holding adversely to any one. * * * There was no person capable of suing until the qualification of Gardner as administrator of Spann, and neither the statute of limitations, nor the equitable bar could commence its operation against the administrator before his qualification." It would be tedious, and certainly not necessary, to collect and refer to all the cases on this subject. They all lead in but one direction, and to the conclusions we have stated.

Beginning to run in July, 1860, it had run about a year and six months when the statute was arrested by special act of the legislature and did not again begin until April 2, 1867. Griffin v. Mills, 40 Miss., 611; Mister v. McLean, 43 Miss., 268; McCutchen v. Daugherty, 44 Miss., 419; Hill v. Boyland, 40 Miss., 618. Before July, 1867, E. H. Field retired from the administration of the estate of D. I. Field, and C. I. Field, surviving partner, became administrator. He died in September, 1867, and in October, 1867, Brutus J. Clay qualified as administrator of both estates. After July, 1867, there was no one to sue, the only creditor of the firm having the firm property in his hands as survivor, and being the administrator of his deceased partner. In October, 1867, Brutus J. Clay, as administrator of the surviving partner, had the right of possession and control of the partnership property, and he was the administrator of

the partner who died first. Manifestly, he could not sue himself, and thus acquiescing, in his representative capacity, in the conduct and management of the business, his action would seem to be binding on the widow and heir of D. I. Field—certainly to the extent of suspending the statute of limitations.

Mr. Wood, in his work on limitation, thus lays down the law: "The question of the statute does not arise where a legatee is also an executor of the testator, *so that the same hand gives and receives.* Thus, in the case first cited in the last note, where such a condition existed, Lord Hatherly, V. C., said: "Having the whole of the testator's assets in his hands, he could not sue himself; the legacy was, therefore, either at home, that is to say, it would have been satisfied, if there had been assets, or it was kept alive, because, in ordinary circumstances, a bill might have been filed to keep it alive; but this gentleman, (the administrator,) could not have taken so absurd a step as to file a bill against himself for the purpose of making himself pay his own legacy." This rule in effect would seem to apply to a case where the executor is an ordinary creditor of his testator, and as *such is the rule when the debtor is administrator to the creditor,* it would seem to hold good in the converse case. * * * Where the debtor takes out administration to the creditor, time will not run in the debtor's favor even though it has commenced to run previously to his administration. And it appears that where administration of the goods of a creditor is given to a debtor, this, being done by the act of law, is not *an extinction of the debt, but a suspension of the remedy.* §§ 189, 117.

The reason of this rule is not applicable alone to the case of an executor; the point is "that the same hand gives and receives." The debtor in this case as to the firm liability was the surviving partner; he could not sue himself. He was administrator to himself as creditor; and if the reverse be conceded the same rule must prevail. In our view the *right to sue* could only arise after the death of D. I. Field; the four-year statute was not, therefore, applicable.

Ferguson v. Crowson, 25 Miss., 430;
Benjamin v. Robertson, 27 Id., 501;
Trench v. Davis, 28 Miss., 218;
Pope v. Bowman, 27 Miss., 194;
Rucks v. Taylor, 49 Miss., 552;
Whitney v. State, 52 Id., 732;
Metcalf v. Grover, 55 Id., 145.

It has been objected that C. I. Field put himself in the unfortunate predicament and therefore cannot avail of it, and that his daughter stands in like case; but the statute expressly authorized the court to appoint a creditor administrator of the estate of his debtor, and without this power an insolvent debtor's estate would never be applied to the payment of his debts, or might never be. Code 1857, Art. 61, p. 438. Even where the next of kin was a creditor, the High Court of Errors and Appeals held that this fact furnished no reason for a refusal to appoint her.

Pendleton v. Pendleton, 6 S. & M., 448.

But if the statute was not thus arrested, it had not run the length of time necessary to bar the complainant when the proceeding in the probate court was commenced for the sale of her uncle's half of the plantation to pay his half of the debt due C. I. Field by the firm, nor when the sale occurred and the property was actually sold and possession delivered. As counsel laid stress only on this point in regard to the statute of limitations, we think we have fully answered all their objections and that our rights are not impaired.

The court cannot fail to see the peculiar equities arising in this case. There can be no doubt of the fact that the first administrator of D. I. Field and the surviving partner agreed together to work the partnership out of debt in order to save the estate to the widow and heir of the deceased partner. This it was competent for them to do, and certainly, until the administrator of the deceased partner *required* a settlement and sale of the joint property, a marshalling of the assets and payment of the debts, the surviving partner was under no legal duty to take this

course. He was not bound to do it, and in a proper case, would have been enjoined from so doing. Indeed, the case of Robinson v. Hilzheim and others, lately decided by the supreme court of Mississippi, is a case precisely in point; and while the decision by the Supreme Court has not been reported, it may serve our purposes to refer to it. R. & H. were partners in the business of conducting the Edwards House in Jackson, the title to which stood in their names. H. died, and R., who was a large creditor of the firm, qualified as administrator of H. and continued the business as before H.'s death until he had paid off all the firm debts except those due to himself—being engaged in it some three or four years. Still being administrator, and when separate creditors of H. were moving to have a half interest in the property sold, R. began a proceeding in equity against the heirs of H. and the separate creditors of his estate, for sale of the joint property to pay his debts to the exclusion of H.'s creditors. There was no administrator of H.'s estate before the court. The bill was maintained and the property sold. R. of course accounted in the proceeding for rents and profits and was allowed for taxes, insurance and repairs and the payment of debts. There is, therefore, no difficulty as to the *form* of this proceeding, the parties to the suit, or the relief prayed. The complainant assumes a difficult role, it is true, but there is no reason against her bill to be found in the suggestions of adverse counsel.

There is another view to be taken of it. The representatives of the two partners deceased have adjusted all other matters of account. They were in hearty accord, and the representative of the surviving partner, in view of all the facts, chose the probate court proceeding as furnishing the best possible settlement for all concerned. As to the right of C. I. Field he had the full power to do this subject to confirmation on the part of complainant; she did confirm and ratify the act by taking possession of the property under the deed to her; and after her majority exercising exclusive rights of possession. As to the defend-

ant Field, the representative of his father could take this course at least subject to his ratification at his majority, if he could not fully determine the matter himself, he having all the beneficial interest, as such representative, in the firm property to the extent of his intestate's interest therein. If the right and power to ratify be conceded to D. I Field, Jr., his election must be held to have been made when the action of ejectment was brought. The widow is still standing by the proceeding and insisting on complainant's being concluded by it—for her claim to dower rests for its support wholly on that theory. Granting this premise, the limitation bar cuts no figure in the case, and the question for the court becomes very easy of solution. Either to allow the election to stand or to have the case disposed of on its merits because of the repudiation of the settlement by defendant Field. The burden in either event is on the complainant. The probate court sale is still *in fieri*, it has never been confirmed. Smith v. Denson, 2 S. & M., 326. And the failure to have the sale reported to and confirmed by the probate court is an insurmountable obstacle in our way to a successful plea of the one year's statute provided for in the Code of 1871, § 2173. See Williams v. Campbell, 46 Miss., 57.

Cole v. Johnson, 53 Miss., 94;
Gaines v. Kennedy, Id., 104.

If the probate court proceedings were valid, but subject to defendant Field's ratification after he attained his majority, the complainant's right to move in the present suit only arose when the ejectment suit was brought. By repudiating the sale he could not secure to himself the privilege of pleading the statute of limitations. Hendricks v. Pugh, 57 Miss., 157.

He must put the complainant *in statu quo* and leave her in no worse fix than that in which she was placed by and because of the sale. That we understand to be the clearly equitable view of the case. So much for the case in its first aspect.

III.

But there is another phase presented by the pleadings. The bill is full as to all its disclosures and gives all the complainant knew or could ascertain. If the court should think that the administrator of the two deceased partners had the authority to initiate the probate proceedings; that he thus made an election binding on all the parties in interest; and that the question of a partnership is wholly out of the case, we insist that this court shall take the case as it was left by him and complete it. The case could be treated by the chancery court of Bolivar county as a pending application to sell the lands for the payment of the debt, and proceeded with accordingly. There could be no such thing a a *hiatus* in the court, or in the administration of justice. If the administrator was alive now he could, by notice, have the report of sale, if made, set aside, and a new sale ordered. The cause could be regularly transferred to the chancery court of Bolivar county, but that would not be proper in view of the action of ejectment here. The administrator, too, is dead.

This complication cannot, however, affect rights—the parties are here; the land is within the jurisdiction of the court; the recent decision of the suit at law by this court fixes the rights of the appellee; and the only thing to be done to promote a full, fair and final settlement, is to ascertain and fix the balance due to the complainant, on an accounting had, and order a sale.

It cannot be said that complainant's rights are to be affected adversely because of the course pursued by her father's representative, especially when the same person represented the ancestors of both parties to this suit. If he acted for both, he could conclude neither unless both were equally affected. The test of his authority must furnish the rule. As administrator of the surviving partner he was entitled to the possession of the property to the exclusion of the heir, and was only answerable to himself as administrator of D. I. Field. There can be no doubt of this and a reference to authorities is unnecessa-

ry. Thus representing both partners, Brutus J. Clay proceeded to the sale of D. I. Field's half interest in the Content plantation to discharge half of the firm debt to C. I. Field's estate, considering this half of the debt to be a separate demand against D. I. Field's estate. The complainant purchased this half interest and was let into possession. Her bid was $6,000, and her receipt for that amount was given to the administrator of her uncle. The bid was, therefore, *bona fide*, and the amount of it applied to the payment of the debts of D. I. Field. If this proceeding was fairly begun, conducted and concluded, there is no reason for rejecting or upsetting it unless the defendant Field has the right to repudiate it. If he do so repudiate it, our rights remain, and the least equity we have is to fix the bid as a charge upon the land. There is but one restriction upon our right, and that relates to the status of our claims "*at the time of the sale.*" If they were not barred then, they are not barred now. *Weaver v. Norwood*, 59 Miss., 680. In this case the supreme court say: "The rights of the parties are to be considered now as they would be if the sale had never been made, and there is no room for applying the statute of limitations. Aside from the act of 1873, a court of equity will, in favor of a *bona fide* purchaser who failed to acquire the title which he believed he was getting, charge the lands in the hands of the owner with the amount of the purchase money appropriated to the discharge of an encumbrance on it": "This," say the supreme court, "has been adjudicated in an unbroken line of decisions, beginning with *Ragland v. Green*, 14 S. & M., 194, and ending with *McGee v. Wallis*, 57 Miss., 638." 59 Miss., 678. We call especial attention to a collection of the cases in the brief of Houston & Reynolds, 59 Miss., 666.

It is said, however, that there was no money paid, and that the mere giving of a receipt for it to the administrator and entering a credit on the note is not a payment. The suggestion is specious; there was a *deed* made to complainant and that operated as a payment; there was a par-

tial discharge of the debt, and that was a payment. That very point was presented to the court in Sivly v. Summers, 57 Miss., 712, and did not attract the least attention. Rawley Sivley and R. S. Drone, two creditors of G. W. Summers, by promissory notes, due February, 1861, and January, 1865, petitioned to have Charles Hill, executor, removed. This was done and Rawley Sivly was appointed administrator on August 12, 1872, upon his own petition. On his application the lands of the decedent were sold and Sivley and Drone became the purchasers jointly. On the coming in of the report of sale they excepted to all the other claims exhibited against the estate; their exceptions were sustained, and the proceeds of sale were ratably applied to their notes. *No money was ever paid, and they simply surrendered their notes.* The sale was set aside because of the collusive arrangement between Sivly and Drone, but they were allowed to fasten a lien upon the land to the extent of the *amount of his bid.* We call special attention to the statement of the case, the brief of counsel, and the opinion of the court. It covers all the points made against us by adverse counsel. The four years' statute was held not to apply as to Drone's debt, which became suable *after the death of Summers*, page 729, and in answer to the objection that Drone did not buy in good faith, and that the purchase money was not applied in good faith to payment of debts, and that nothing should be allowed against the land, on account of the indebtedness to Drone, the court say: "Our view is that, in setting aside the sale of the land, the *status quo* of the parties, as nearly as possible, should be restored, and that as Drone was at the time a creditor of the estate, he should be still so regarded, with the right to charge the third of the land sold and now in controversy with one-third of his claim against the estate." Page 732. The lands in controversy were *six hundred acres*, being a remainder after the widow's dower, though Drone had purchased the whole 1880 acres. His entire bid was $4,800, his share of the proceeds $1,434; and one-third his *debt* was charged on the lands—*not of his bid.* Page 715.

The former report of this case shows that the costs were only paid—$200. 56 Miss,, 13, brief of Calvin Wells. The case of Callicot v. Parks, 58 Miss., 528, is quite similar. Looking into the transcript of that case I find that the claim of Mrs. Parks against the estate of Wilkins, her first husband, was $2,500, and her bid at the sale $5,000. 52 Miss., 532, 533. *Her claim was surrendered* and the balance of her bid paid out to other creditors, whose claims were purchased by her husband; and yet she charged the land with her whole bid; and the lands were *sold in 1867*, and her bill was filed *in October, 1878*, after she had failed in the ejectment suit brought against her. The right thus to sue is an *equity* devised by the courts quite outside the statute of limitations, and which only arises where heirs-at-law upset sales of their ancestors' property made, under judicial sanction, to pay debts. Being thus a creature of the courts, it is unknown to the statutes of limitations, which make no provision touching it whatever.

IV.

Since the death of their fathers, the complainant and defendants have had their domicile and residence continuously out of the state. Indeed, Brutus J. Clay resided and was domiciled in Kentucky. The provision in our several codes on this subject reads thus: "If at at the time when any cause of action mentioned in this chapter shall accrue against any person he shall be out of the state, the action may be commenced within the time herein limited therefor, after such person shall have come into the state; and if, after any cause of action shall have accrued, the person against whom it has accrued shall be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action." Code 1857, pp. 400, 401; Code 1871, § 2147; Code 1880, §§ 2677, 2678.

This statute has been applied in a variety of cases. In Sledge v. Jacobs, 58 Miss., 194, Monroe Cheatham purchased lands belonging to estate of Mary E. Pope at ad-

ministrator's sale under chancery decree, giving bond for purchase money due December 20, 1871. Prior to 1876 he moved out of the State and became permanently resident in some other State. Prior to January, 1878, he died and there was no administrator on his estate. In April, 1880, the administrator of Mary E. Pope brought bill to enforce lien for purchase money against Sledge, vendee of Cheatham, and it was maintained against the plea of the statute of limitations on two grounds: 1. Because of the obligor's absence from the State; and 2, because the obligor having died before the expiration of the time limited for an action to be brought, an action might be brought at any time within one year after the date of letters of administration granted. Code 1871 § 2162.

In Pindell v. Harris, 57 Miss., 739, the note was executed in 1865 and the suit was brought in 1880, the presence of Mrs. Harris in the State for several months alone sustaining her plea.

See Bowen v. Hansham, 56 Miss., 619;
Withers v. Bullock, 51 Id., 539.

V.

Conceding that the complainant's rights are not barred, there could be no such thing as *laches* or *staleness* about her demand. She had a right to act on the presumption that the family settlement would not be disturbed. If the proceeding in the probate court were at all warranted, her right to bring this bill only arose upon the adversary proceedings against her by the defendants. If the court did not have the jurisdiction to entertain the proceeding, there could be no doubt that our rights are unaffected wholly. The loss of our title to the land restores our right to the purchase money at least. Our reliance upon the sale should not be visited upon us. Practically the debt of the appellant has been paid by or because of the sale, and the appellees greatly benefitted thereby.

Indeed, under our statute of limitations which applies equally to courts of law and equity, there could be no

such thing as *laches* when one's rights are not barred. It is only in those cases where courts of equity are not included in the statute that *laches o. staleness* is imputed by a kind of analogy. Mr. Story puts it thus: "But a defense peculiar to courts of equity is founded upon the mere lapse of time, and the staleness of the claim *in cases where no statute of limitations directly govern the case. In such cases*, courts of equity act sometimes by analogy to the law, and sometimes act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands by refusing to interfere, where there has been *gross laches* in prosecuting rights, and unreasonable acquiescence in the assertion of adverse rights." 2 Story's Eq. Jur., § 1520 and note 3. It not unfrequently happens that a court of chancery is asked to prevent a party from pleading the statute of limitations. Id., § 1521; Barnett v. Nichols, 56 Miss., 622, 627.

It is palpable, therefore, that even if the defendants could rely upon our *so-called laches* in this case, there is no such thing as *gross laches* imputable to the complainant. She attained her majority a few days before the sale in 1869, has been married and absent from the State ever since, and had just ground to believe that her title would not be disturbed. The case can easily be disposed of so as to do full justice to all parties, and there is no good reason against maintaining the bill.

WILLIAM L. NUGENT, *S. J.*

Office Supreme Court U. S.
FILED.
DEC 24 1885
JAMES H. McKENNEY.
CLERK

118-97

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 667.

PATTIE A. CLAY ET AL., *Appellants.*

vs.

DAVID I. FIELD ET AL., *Appellees.*

ON APPEAL FROM THE NORTHERN DISTRICT OF MISSISSIPPI.

FRANK JOHNSTON,
J. E. McKEIGHAN,
For Appellees.

Nixon-Jones Printing Co., Law Printing, 210 and 212 Pine Street, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 667.

PATTIE A. CLAY ET AL., *Appellants,*

vs.

DAVID I. FIELD ET AL., *Appellees.*

ON APPEAL FROM THE NORTHERN DISTRICT OF MISSISSIPPI.

STATEMENT.

The bill alleges that D. I. Field, father of defendant, D. I. Field, and the husband of Lucy C. Freeman, now wife of defendant, Charles L. Freeman, died in Bolivar county, Mississippi, on the 11th day of September, 1859.

That at said date he was jointly seized and possessed with C. I. Field, father of said complainant, Pattie A. Clay, of a large plantation, the subject-matter of this controversy, in said county, known as the Content Plantation, and as well, a large number of slaves, and other property, all of which personal and real property was purchased for and used by them in an agricultural partnership, began in 1855, and conducted to the said death of D. I. Field, under the name and style of D. I. Field & Co.

That D. I. Field and said C. I. Field each put into said partnership about $18,000 in cash, and also incurred obligations on account of partial deferred payments on portions of the plantation.

That the total amount of all property of said partnership was sixty or seventy thousand dollars, or possibly more.

That the said D. I. Field, at the date of his death, owed individually about $12,000, which included a certain firm debt due to said C. I. Field (hereinafter referred to).

That all of his individual indebtedness to other parties has been paid, and all of the firm debts, except said debt to C. I. Field.

That one E. H. Field became administrator of the individual estate of D. I. Field, took possession of the partnership property and managed and controlled it up to the commencement of the civil war.

That before the death of said D. I. Field the said C. I Field advanced to said firm certain money, and took memorandum obligations from said firm, alleged to have been executed by the said D. I. Field.

Said obligations were as follows: —

"On or before the first day of January, 1858, the concern of David I. Field & Co. will be owing C. I. Field the sum of seven thousand, three hundred and eighty-five (7385^{31}/_{100}$) dollars and thirty-one cents, for money advanced the concern for payment for the Leach land and cash advanced for the purchase of negroes in Kentucky in

the summer of 1856; to bear six per cent interest from maturity to when due.

"This 23d December, 1856.

"D. I. FIELD & Co. [SEAL]"

"The concern of David I. Field & Co., is owing to C. I. Field the sum of five thousand six hundred and sixty-six and two-thirds dollars ($5,666 2/3) (it being that amount advanced by him of payment to Kirk, balance on concern note due him first day of January last); he is to be paid six per cent for said amount from date until paid.

"This 20th March, 1857.

"DAVID I. FIELD & Co.,

A credit of $243.50 is alleged to be on said note.

"BOLIVAR, June 13, 1857.

"Due C. I. Field or order, one thousand three hundred and eighty-nine and twenty-nine one-hundredths dollars ($1,389 29/100) for value received on settlement to this date.

"D. I. FIELD & Co."

"Due C. I. Field or order, the sum of eleven hundred dollars ($1,100), it being money this day advanced by paying to Wm. Kirk, through his draft on Hewitt, Norton & Co., of New Orleans, this fifth day of June, 1858.

"D. I. FIELD & Co. [SEAL.]"

On said notes was a memoranda made by said C. I. Field, as follows: "All of the within notes are the joint notes of the firm to C. I. Field, consequently one-half of the within claim is chargeable to the estate of D. I. Field."

That on the 12th day of December, 1859, C. I. Field probated and registered said partnership obligations in the Probate Court of said county against the individual estate of said D. I. Field.

That nothing was made over expenses on the plantation

in the years of 1859, 1860, and 1861. That during the war the said C. I. Field took the negroes to Texas. Their labor about equaled expenses.

After the surrender C. I. Field brought the negroes back.

That in 1866, C. I. Field, for the purpose of working said plantation, formed a partnership with one L. C. Martin. Money was lost in the enterprise.

That during the year 1867, the plantation was leased for $4,000, but the said C. I. Field having died on the 18th of July, 1867, no part of said rents came into his hands.

That in October, 1867, one Brutus J. Clay became administrator in the Probate Court of said Bolivar County of the estate of said C. I. Field and continued so until his death in October, 1878.

That a few months before his death, the said C. I. Field succeeded said E. H. Field as administrator of said C. I. Field, and after his death the said Brutus J. Clay was appointed also administrator of the estate of D. I. Field.

That the said C. I. Field died without making a final settlement of his said administration, and without payment of his said claim.

The bill further alleges, that on the 9th of March, 1868, the said Clay filed his inventory in said Probate Court, which included said memoranda notes, which said inventory was approved and ordered recorded. That thereafter the said Clay (being administrator of the estate of both D. I. and C. I. Field) commenced proceedings to have said estate of D. I. Field declared insolvent (the only alleged debts being said alleged partnership indebtedness) and said plantation sold for the payment of said one-half of said memorandum notes.

That said estate of D. I. Field, on said application, was declared insolvent by said Probate Court. That after advertisement, duly made, the said administrator, in conformity with the said decree of said Probate Court, on the 20th day of December, 1869, exposed said undivided half of said plantation for sale to the highest bidder. That at

said sale *the attorney of said administrator appeared* and bid on said property for said Pattie A. Clay, sole heir at law of C. I. Field, for the sum of $6,000, that being the highest and best bid.

That after the payment of costs, the said administrator accepted the receipt of said Pattie A. Clay for said sum of $6.000. *That at the date of the said sale the* said *Probate Court had ceased to exist*, the Constitution of the State, adopted on the 1st day of December, 1869, having abolished said court. Notwithstanding said fact, said administrator made report of said sale to said Probate Court, but no confirmation of said sale was had.

That said Constitution authorized the Legislature to provide for the removal of causes then pending to the proper courts under the new constitution (which gave probate jurisdiction to the chancery courts instead of the probate). That the Legislature on the 4th of May, 1870, passed an act which provided that all causes and proceedings remaining undisposed of in the Probate Court should be transferred to the Chancery Court, which should proceed to hear and decide the same, but no steps were ever taken to have said proceedings or the sale of said land transferred to the Chancery Court of Bolivar County.

That the sale was made in good faith, but that the Statute of Limitation of one year, as presented by section 2173 of the Code of 1871, affords complainants no relief.

That no settlement was ever made by said Clay of the affairs of said estate.

That the said Probate Court had no jurisdiction to adjust the partnership of D. I. Field & Co., or to sell the property of the said firm, especially as the proof of said C. I. Field on said notes showed that they were partnership obligations, and said decree for the sale of said undivided half of said land was void for that reason, and also because said Probate Court had ceased to exist at the date of said sale.

That said Pattie A. Clay attained her majority on the 22d

day of November, 1869, and married Brutus J. Clay, her co-complainant, on the 20th day of February, 1872.

That notwithstanding said sale was not confirmed, the said administrator made a deed of said undivided half to said Pattie A. Clay, and she went into possession under the same.

That the defendant, D. I. Field, sole heir at law of said D. I. Field, deceased, soon after coming of age, and on the 27th of November, 1880, commenced an action of ejectment in this court against the said complainants for the recovery of the possession of said undivided half.

On the 1st of December, 1880, complainants filed their plea, and said cause is now pending on the law side of said court.

That in the year 1859, the said Lucy C. Freeman left the State of Mississippi with her said son D. I. Field, and took up their residence in the State of Kentucky, and said defendants have lived continuously out of the State of Mississippi ever since; and they have been absent from and resided out of the said State ever since that time.

The said Lucy C. Freeman has intermarried with the said Charles L. Freeman.

That on the 12th day of April, 1873, the said Lucy C. Freeman, then Field, filed her petition for dower in said land in the Chancery Court of Bolivar County against the said administrator and said complainants and a decree was rendered in her favor on the 19th of January, 1875.

Said administrator and the said complainants appealed to the Supreme Court of Mississippi, and on the 24th day of May, 1876, the said decree was affirmed. On the 12th day of November, 1879, her dower in said lands was allotted to her and she was placed in possession of the same.

That the Supreme Court in its decision held that the rights of said complainants in said land would be unaffected by said dower proceedings.

That on the 30th day of September, 1880, the said Lucy C. Freeman exhibited her bill in the said Chancery Court

of Bolivar County for $6,500 against said complainants, the amount claimed to be due her for the rental value of her dower interest, which said suit has been transferred from said court to said District Court.

That shortly after the said sale of the undivided half interest, the said administrator of the individual estate of D. I. and C. I. Field made his final settlement, and was discharged from his trust, and there has been no administrator since of either of said estates. That E. H. Field rendered just and true accounts, and was discharged, and C. I. Field as administrator did not receive anything or disburse anything while he was administrator. That all the personal property of said partnership was lost and destroyed during the war.

The bill alleges that the said memorandum notes and partnership agreements have been lost, but that the copies of said notes set out in the bill, and filed as exhibits to it, were made out by one W. S. Montgomery, one of complainant's former attorneys, to whom they were entrusted.

That the said C. I. Field, at the time of his death, was not in debt, or if he was, such indebtedness has since been paid, and well as the debts of said partnership, except said memorandum notes, and said plantation is not worth said debt.

That the records of said proceeding in said probate and chancery courts have been partially destroyed by fire, and the records of the proceeding had in the matter of David I. Field, deceased, including the petition of said Brutus J. Clay, Sr., for the sale of said undivided half of said land, is greatly defective, most of the same having been destroyed by fire. An exhibit is made of what remains.

The bill further sets out the details of the running of the plantation since 1870, and that no practical good has come out of the plantation, etc.

The prayer of the bill is as follows: —

"The premises considered, your orators hereby waiving an answer under oath, except as to the interrogations here-

unto appended, pray, that the said Lucy C. and C. L. Freeman, and the said David I. Field, be made defendants hereunto, and compelled to answer the several allegations of the bill; that process of subpœna herein issue against them, to be executed upon their attorneys of record; that a receiver be appointed to take possession of said Content Plantation, and lease the same from year to year until a final hearing of the cause; entering into such bond as this honorable court shall determine; making report from time to time as the court may direct, and your orators here now offering to account to this honorable court for all rents and profits received, and all expenditures and repairs made on account of said partnership property, pray that the assets of said partnership, including the said plantation, be marshalled and sold for such balances as may be found due to your oratrix, upon a fair accounting had, as well about the profits, expenses, taxes, and repairs, as about the partnership debts due her ancestor heretofore set out in this bill, or if this honorable court should adjudge or determine that the said proceedings in the said Probate Court of said county of Bolivar, constitute an election binding upon her and estop her from proceeding otherwise than against the undivided half interest of said David I. Field, deceased, in said Content plantation for the half of said partnership debts due to her ancestor. Your orator, in that event, prays that after the amount due to her as such heir at law and distributee upon such accounting shall be ascertained and fixed, the said undivided half interest of said David I. Field, in said plantation, shall be sold under the proper decree of this court, thus carrying into execution the decree of said Probate Court of Bolivar County rendered in the matter of the administration of the estate of said David I. Field, deceased. But if this honorable court should adjudge and determine that your orators are not entitled to either of the special reliefs hereinbefore prayed, they then pray that this honorable court may decree that your orators have a lien upon the said undivided half interest of

said David I. Field, deceased, in said plantation, for the said sum of six thousand dollars and the interest thereon from the 20th day of December, 1869, lessened by any balance that may be found due by her upon such accounting to be had in the cause, as may be adjudged to be fair and equitable. And if it be determined that your oratrix has lost her right to proceed against said plantation as assets of said partnership for the payment of said partnership debts due to her said ancestors, they pray that an accounting may be had between them and the said Lucy C. Freeman in connection with her claim, as propounded in and by her bill of complaint upon such principles and in such manner as this honorable court shall adjudge to be fair and equitable. Or, if mistaken in the relief sought, then for such other, further, and general relief and decree as to equity belongs and your orator's case requires.

In the meantime your orators, hereby confessing they are without valid title to the undivided half interest of said David I. Field in said plantation, and that the whole controversy between them and said defendants should be determined in the cause, pray that the said defendants, their agents and attorneys, be enjoined, inhibited and restrained further prosecuting their said suits in this honorable court against your orators, and on final hearing that said injunction be perpetuated. May it please, etc. (Prayer for subpœnas, etc.)

To this bill the defendant filed his demurrer, assigning as grounds of demurrer thereto: —

1st. Want of equity in the bill.

2d. Because the pretended claims set up in the bill are stale, and complainants, Pattie A. Clay, her ancestor and his representatives, have been guilty of such *laches* as prevents relief in a court of equity.

3d. Because the pretended debts and claims set up in said bill are barred by the Statute of Limitations.

4th. Because the statements and prayers of said bill are inconsistent and self-contradictory.

5th. Because there is a defect of parties, in that the said suit for a partnership accounting should and can only be prosecuted by the administrator of the estate of C. I. Field, and against the administrator of the said estate of D. I. Field.

I.

On the theory that the bill presents a case of accounting between partners, which necessarily must be and in one of its chief features, the action, as a balance must be struck before any relief can be given, is barred by the Statute of Limitations of the State of Mississippi. That the right of a surviving partner to demand a settlement of accounts is against the executor or administrator of the deceased partner, and not against the heirs, is too clear to require the citation of authorities. It is equally clear that the right to demand a settlement of a surviving partner passes to the executor or administrator of the deceased partner, and not to the heirs.

If C. I. Field, the ancestor, in his lifetime, or after his death, his administrator had brought a suit for an accounting, it would have been prosecuted against the administrator of D. I. Field, and not against his heir, D. I. Field, Jr. Such action would lie in equity and also at law.

52 Mississippi, 194, Hunt *v.* Gordon;
Coke Litt. 171;
3 Johnson Ch. 360, Duncan *v.* Lyon.

The bill in this cause is for an account and settlement of

the partnership of David I. Field & Co., and for a decree charging the partnership lands with the amount found to be due to the complainant.

This is the main theory and character of the bill.

It is true that there is a prayer in the alternative that the court will enforce the decree of the Probate Court of Bolivar County, made in 1869, or charge the land with the bid of $6,000 made at the sale under the Probate Court decree.

But it is admitted as matter of fact by the bill that the whole proceedings in the Probate Court shows on its face that the only debt for which the administrator asked a sale of the land was the partnership debt due to surviving partner's estate, and the only property sought to be sold was partnership property.

The bill contains these further material admissions :—

"The Probate Court of the said County of Bolivar had no jurisdiction to wind up, settle, or adjust the partnership of the said David I. Field & Co., to sell the property of said firm for the payment of the debts of the partnership." * * * "that the final decree of said Probate Court was void for the like reason, and because your orator *was not a party thereto*, nor could nor did she waive any right held by her growing out of the existence of the partnership above mentioned."

It is further conceded that "the sale of the land under the said Probate Court *decree was utterly null and void, because the said court had no jurisdiction of the proceedings.*" [The *italics* are ours.]

It is true that the Probate Court had no sort of jurisdiction of the subject-matter, and no pretense of legal power to entertain the proceedings for the sale of the lands or to decree their sale. There was an entire and absolute absence of all jurisdiction of the subject-matter *ab initio*. That court was one of special jurisdiction. Its jurisdiction over land was derived from legislative grant, and this grant was of a special and limited jurisdiction, which could only be exer-

cised in strict accordance with the limitations and conditions prescribed by the legislature.

Root *v.* McFerrin, 8 George, 17;
Planter's Bank *v.* Johnson, 7 S. & M. 449;
Bank of Manchester *v.* Martin, 9 S. & M. 613.

The Probate Court had no jurisdiction over a creditor's bill. Nor of a bill of review.

Harris *v.* Fisher, 5 S. & M. 74.

It could not entertain a bill for an account and had no power to appoint a receiver.

Scott *v.* Searle, 5 S. & M. 25.

And it has been distinctly decided that this court of special powers had no jurisdiction to entertain a bill to settle partnership accounts.

Scott *v.* Searles, 5 S. & M. 25.
Scott *v.* Searles, 6 S. & M. 246.

And so in accordance with the well recognized rule in Mississippi, the learned judge of the District Court said in his opinion: "It is clear to my mind that the Probate Court had no jurisdiction to settle the indebtedness of D. I. Field, if any existed, and to decree a sale of the interest of which D. I. Field died seized in the lands for its payments." * * * "Consequently the whole proceedings in the Probate Court are a nullity, and as though they had never been."

The present bill is barred by limitation. Whether the three, six or ten years' statute is applied.

Code of 1857, sec. 2, p. 399, and sec. 3, p. 403.

By analogy six years would probably be the correct period of limitation to apply to a bill for a partnership account. Though the present bill is equally barred by the period of ten years.

At the death of D. I. Field, September, 1859, the survivor might have filed a bill for an account and settlement. C. I. Field did not die until eight years afterwards, in September, 1867.

Certainly during this long period of time he was under duty to assert his claims if he had any. The statute of limitation began to run against a bill of this character *in the lifetime of C. I. Field*, the surviving member of the firm, who survived his partner eight years.

And the statute once put in motion continued to run without interruption, except where suspended by statute.

If a debt is due at the time of the death of a debtor the statute, having commenced to run, will not be suspended between the death and the appointment of an administrator.

Abbott *v.* McElroy, 10 S. & M. 100.

When the statute of limitations is once put in motion it continues in operation.

Pollard *v.* Eckford, 50 Miss. 255;
Jennings *v.* Love, 24 Miss. 255;
Parmelee *v.* McGinty, 52 Miss. 82.

The suspension of the statute of limitations during the late civil war is a fact wholly immaterial in the computation.

At the time this bill was filed, 1882, twenty-three years had elapsed since the death of D. I. Field, and fifteen years had passed since the death of the complainant's ancestor, C. I. Field, and thirteen years since, November, 1869, the date at which the complainant attained his majority.

There can be no possible theory upon which this present bill is not barred by positive statutory limitation.

It is clearly impossible that the void proceedings in the Probate Court, to which complainant pleads in her bill she was not a party, has suspended the running of the statute of limitations.

No rights were acquired or lost by that void proceeding. No title to the property passed, no part of the alleged claim was paid, no legal obligation was incurred to pay the bid, and no money was paid, as admitted by the bill.

Such was the character of that proceeding, as decided hy the District Judge, and, in effect, decided by this Honorable Court, in the ejectment suit between these same parties at the present term.

Using the language of the District Judge: "Consequently the whole proceedings in the Probate Court are a nullity, and as though they had never been." And this decision is based on the rule of law, well settled by the Supreme Court of the State: an administrator cannot sell land to pay a debt barred by limitation.

Moody *v.* Harper, 9 George, 599.

The statute of limitations will commence to run from the date of the dissolution of the partnership, against a bill by one partner against the other for an account.

Prewett *v.* Buckingham, 6 C. 92.

The only remedy is in chancery. In a word, the chancery court alone has jurisdiction to settle partnership accounts.

Hanway *v.* Robertshaw, 49 Miss. 758;
Robertshaw *v.* Hanway, 52 Miss. 713.

The entire proceeding for the sale of this land was void *ab initio*, as admitted by the bill in this case: "The sale of the land under the said Probate Court decree was utterly

null and void, because the court had no jurisdiction of the proceedings."

It is evidently impossible that a void proceeding in a court, having no pretense of jurisdiction, can have the effect of suspending the operation of a statute of limitations.

From the very voidness of the whole proceedings nobody's rights were changed or affected.

The district judge said in his opinion on this precise question: "This neglect of the administrator and complainants arose, no doubt, from the fact that they relied upon the proceedings in the probate court, but this mistake upon their part can not prejudice the defendants in their rights, or place them in a more unfavorable condition than they would have been had they not taken place."

The bill in equity for a settlement of the partnership account is, therefore, barred by the statute of limitations.

* * * * * * * * *

Conceding the view of counsel for appellant that no bill for a settlement of the partnership accounts could have been brought until the payment of all the firm debts (which is not a correct statement of the law), it is clear from the bill that all the creditors of the firm were paid off before the Probate Court proceedings in 1869. Certainly the bill could have been brought at the time, and even on this view it is barred by limitation.

* * * * * * * * *

The right to an action for an accounting having been barred in the administration of the estate of C. I. Field, and having been barred by the statute of limitations, it is barred equally against any pretended claim of the beneficiary, Mrs. Pattie A. Clay, complainant.

Sec. 2694, Code of 1880, provides: —

"When the legal title to property, *or a right in action*, is in an executor, administrator, guardian, or other trustee, the time during which any statute of limitations runs against such trustee shall be counted against the person beneficially

interested in such property, although such person may be under disability and within the saving of any statute of limitations, any may be availed of in any suit or action by such person.

II.

But where a demand is not of a legal nature, but purely of an equitable, or where the bar of the statute is inapplicable, courts of equity have another rule, founded sometimes upon the spirit of the law, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage *laches* and negligence.

Hence, in matters of account, although not barred by the statute of limitations, courts of equity refuse to interfere after a considerable lapse of time, from considerations of public policy, from difficulty of doing entire justice, when the original transactions have become obscure by time, and the evidence may be lost.

Story's Equity Jurisprudence, sec. 529.

A court of equity will not, after six years of acquiescence, unexplained by circumstances, or countenanced by acknowledgment, decree on account between a surviving partner and the estate of a deceased partner.

Story on Partnership, sect. 233, Chap. II, note 4.

In reason and justice, says the court in 72 Pa. St. 409, M'Kelvey's Appeal, "why should not the statute close upon partners who, for six years after dissolution, take no step to ascertain the balance between them."

To the same effect is 6 Jones, 124 (N. C.) Weiseman *v.* Smith.

3 Hare's Rep. 347.

If it can in any legal or equitable sense be said that the complainant, Mrs. Pattie A. Clay, by the void sale of the land in December, 1869, became the owner of her ancestor's claim for an accounting against the estate of D. I. Field, then she is barred for the same reasons. She has suffered twelve years to pass without suing anybody. It does not appear from the bill but what the administration of the estate of D. I. Field continued more than four years after said sale in December, 1869. It is merely alleged that settlement was made by the administrator and he discharged from his trust.

It is a familiar rule that a pleading is to be most strongly construed against the pleader, who is supposed to know the facts and to plead them when it can be done most strongly in his favor. All presumptions in such cases are in favor of the party against whom the pleading is filed, and any ambiguous or uncertain averment is to be taken in the sense most adverse to the pleader.

Ayckbourn Chancery Practice, p. 113;
Simpson *v.* Fogo, 1 Johnson & Hem. 23;
Foss *v.* Harbottle, 2 Hare, 461, 502 and 203.

In adjudging a claim stale a court of equity may consider the Statute of Limitations as furnishing a proper period, or it may adjudge it stale within a less period, or it may give greater time. Judged by any standard it would be manifestly unjust and inequitable to compel these defendants to answer, after the lapse of twenty-three years, the matters set out in the bill.

It seems that C. I. Field had no immediate charge of the partnership business. It might well be true therefore that he advanced the money recited and took the memorandum notes, when in the case of similar advances by D. I. Field, who did have charge of the business, no such memorandums would be executed — he either relying on the books of the concern or his own memory, or the recollec-

tion of other witnesses. He is now dead. C. I. Field is dead. No books are referred to in the bill, and if any existed they are no doubt lost or destroyed. Other witnesses who may have known of counter advances are no doubt dead or have forgotten incidents which had no personal interest to them. A great civil war has laid a destroying hand on everything. Private books, records of courts — all have felt its touch. Indeed, as C. I. Field lived in the vicinity of the plantation, and subsequently became the administrator of his brother's estate, any books which have been in existence passed into his hands.

Even the memorandum notes, which were remarkable, if not suspicious, in their character, and which were filed with such haste in the Probate Court as to become still more questionable, and certainly not brotherly, have been lost, and the court must depend upon the alleged copies of counsel not now alive.

It is shown by the bill that the partnership began in 1885, and that D. I. Field was the active managing member of the firm. It is reasonable to suppose that from 1855 to his death in September, 1859, that the necessities of the partnership called on him for advances and outlays which would reduce the alleged memorandum notes. Yet the defendants have and can have no information on the subject and no way to prove any counter charges they might make.

According to the allegations of the bill the value of the partnership property was $70,000, the amount contributed by each partner (according to the bill) in the purchase of this property was only $36,000. The total amount of the memorandum notes is only $15,124.72, total $51.124.72, leaving $18,874.72 to be paid by D. I. Field, either out of the profits of the plantation or out of the private funds of D. I. Field. It is rather unreasonable to suppose, and the complainants are not entitled to the presumption that enough profits would be realized out of such a new enterprise necessarily involving large expenditures at every step, to pay

in five years this large sum, drawing interest all the time, and also support D. I. Field and his family. If it did the result was very different from the melancholy picture given us in the bill of the subsequent working of the plantation.

Again, the partnership articles are lost and no copy or stagger at a copy of them is given. Might not the articles, if produced, show that D. I. Field, in consideration of C. I. Field doing nothing (except to charge interest on advances) and D. I. Field devoting all his time to the plantation, was to receive a salary or be allowed more profits than his brother. Certainly, it would have been most equitable for some compensation to be provided for this inequality of service, inasmuch as each contributed the same capital. Yet the bill itself discloses that time has swept away this proof and the witnesses who could tell about it. After the lapse of so many years, and such eventful and destroying ones, the widow and son of a dead partner and brother, both of which relations were of the most confidential character, and well calculated to dispense with business habits and details, are confronted with mere counsellor's copies of memorandum of one partner, and asked to counter-charge if they can. The demand is a hard and oppressive one in a court of conscience, and should not be countenanced. And to make it still harder, the son and mother have, ever since the death of D. I. Field, lived in another State, far removed from all the opportunities which would make it more easy to meet the demands of this bill, and one of them by sex and the other by age, during the whole of this time, disqualified from the investigation of such intricate matters. The precedents are all against the severe requirements of this bill. Such claims are remanded by courts of equity to the obscurity to which the complainants have suffered to gather around them. The attention of the court is respectfully called to a few authorities upon the point of the demurrer.

In equity the spirit and meaning of statute of limitations

have been adopted and acted on as rules of decision though the words of the statute may not embrace the court,

6 C. 312, Mandeville *v.* Lane;
8 G. 567, Mitchell *v.* Woodson;

and hence a court of equity will apply the bar of a statute of limitations to a bill to enforce a judgment.

6 C. 312, before cited.

And hence also a motion in a court of equity to appoint a commissioner to execute a decree to foreclose a mortgage will not lie after the statutory period for a revivor of a judgment had expired.

4 G. 153, Gaff *v.* Robbins.

A portion of complainant's bill contemplates the enforcement of the decree of insolvency of the Probate Court.

The statute will commence to run against a bill for an accounting between partners from the date of the dissolution of the partnership.

6 C. 92, Prewitt *v.* Buckingham.

Courts of equity are not within the words of the statute, but they are within the spirit and meaning.

Courts of equity act in obedience to the statute.

2 Schoals & Lefray, 608;
6 Simmons, 51, Hoare *v.* Peck.

In 3 Hare Reports, 347, the court says: "In this court there is direct and very high authority for the proposition that a court of equity will not, after six years' acquiesence, unexplained by circumstances, or counteracted by acknowl-

edgment, decree an account between a surviving partner and the estate of a deceased partner."

Story on Partnership, section 233, chapter 11, note 4.

In 30 N. J. Eq. Rep. 187, Stout *v.* Executors of Leabrook, the court says: "A court of equity will not permit accounts to be overhauled in favor of a party who has slept upon his rights for a great number of years, and more especially against the representatives of a party who may be supposed to have had the means of defense in his lifetime, but who may have left his successors without the requisite vouchers

"The court is always unwilling to decree an account when the transactions have become obscured and entangled by delay. He who delays asserting his rights until the proof is so indeterminative that it is difficut to decide whether what seems to be injustice to him is not injustice to his advesary, ought to lose all right to the aid of a court of equity, for by his *laches*, the path of justice has become so obscure that it can not be traced with certainty."

In 18 Wall. 493, Clark *v.* Boorman, the Supreme Court used the following language: "The general doctrines of courts of equity concerning lapse of time, *laches*, and stale claims will protect the executor of a trustee, sued after his death, for matters growing out of the trust which occurred forty years before suit was brought, which were known to the ancestors under whom the plaintiffs claim for over twenty years before his death, and where the suit is brought fourteen years after his death, and two years after the death of the trustee, and where no person connected with the transactions complained of remains alive."

In 1st Howard, p. 187, Bowman *v* Wathen, it was held, "That a court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights for a great length of time. Nothing can call this

court into activity but conscience, good faith, and reasonable diligence. Where these are wanting, the court is passive and does nothing. *Laches* and neglect are always discountenanced."

In 5 Otto, 157, Brown *v.* County of Buena Vista, the court says: "The law of *laches*, like the principle of the limitation of actions, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule is necessary to the peace, repose, and welfare of society. A departure from it would open an inlet to the evils intended to be excluded.

The complainants set out in their bill that the defendants D. I Field and Lucy C. Freeman, shortly after the death of D. I. Field, Sr., in 1859, removed to the State of Kentucky and have resided out of and been absent from the State ever since. Granted, but this presented no obstacle to a suit for accounting by C. I. Field against the administrator of D. I. Field, nor by Pattie A. Clay, after his death, against the administrator of D. I. Field. Neither did it prevent Pattie A. Clay, at any time, from December, 1869, to the present time, from bringing a suit against the land to charge it with the alleged equitable lien (it has always been in the State) and brought in the defendants by publication notice.

On a bill in equity to adjust partnership accounts if it appear that by the *laches* of the complainants, the respondents *have lost their evidence* or are placed in a *disadvantageous position*, the Court will deal with it as barred in equity, even though the full time of the statute of limititations has not elapsed.

61 Me. 38, Lawrence *v.* Rooks.

In this case it is alleged in the bill that the original memorandum notes referred to have been lost. If they were still

in existence, and produced, they might show that they were written by C. I. Field, complainant's ancestor himself, which would greatly weaken, if not entirely destroy them as evidence in an accounting suit in favor of complainant. By lapse of time the defendants would be thus put in a more disadvantageous position than if a suit had been diligently begun.

The latest cases of this Court, Landsdale *v.* Smith, 106 U. S., and Coddington *v.* Railroad Company, 103 U. S., are in harmonywith the cases cited.

To avoid the objections to the bill on account of the staleness of the claim and the Statute of Limitations, counsel for appellant have stated several propositions which we will answer briefly.

He seeks to treat the validity of Probate Court proceeding, as depending upon the ratification of D. I. Field, then an infant.

In her bill the complainant states that the whole proceeding was "utterly null and void" *ab initio*. And as matter of law it was null and void, and so it remains.

The learned counsel cites Hendrick *v.* Pugh, 57 Miss. 157, as an authority for the idea that D. I. Field's objection that the sale passed no title, gave the court jurisdiction of the proceeding. The case cited is wholly misconceived. In Kendrick *v.* Pugh the Probate Court had *full jurisdiction of the proceeding*, but rendered a decree for the sale of land, which was pronounced erroneous as to one party, but not void in any respect.

In the case at bar the Probate Court had no power to entertain the petition or to make any decree at all. It should have dismissed the proceeding at the outset for the want of jurisdiction.

And it is idle to discuss the proposition that under the present bill the void decree of the Probate Court can be enforced, or its void proceedings carried forward to a decree.

The conclusion is clear that the present case is to be dealt

with and decided as though there had never been any proceeding in the Probate Court of Bolivar County.

* * * * * * * * * * *

Counsel for appellant suggests that the bid at the Probate Court sale ought to be charged on the land, and against that claim the Statute ought not to run. Weaver *v.* Norwood, 59 Miss., is erroneously supposed to support this proposition. That decision is not in the slightest degree in point. There the purchaser paid his bid, and money was *actually applied* to valid debts, which were charges upon the land. When his title was set aside, because the sale was bad, it was held that he was entitled on the principle of subrogation to charge the land to the extent of valid debts, which were extinguished with the purchaser's money. Moreover, the case was one where the court had full jurisdiction, though the sale was invalid.

This decision is in no respect different from Sivley *v.* Summers. 57 Miss., which with Callicott *v.* Parker, we are surprised to see again quoted as authorities in point, after the allusions to these cases in the opinion of this Court in the ejectment suit of Pattie A. Clay *v.* D. J. Field.

Ragland *v.* Green, 14 S. & M., and McGee *v.* Wallis, 57 Miss., are also cited by counsel in the same connection. All these decisions proceed on the premises of jurisdiction in the Probate Court in the particular case, and actual payment of the bid by the purchaser.

In the case at bar the bid was never paid; no part of the claim was surrendered, and *as shown by the bill*, the sale was never confirmed.

But the appellant, in her bill, insists that the whole proceeding was void from the beginning, and that her rights in respect to her claim were not and can not be affected by that proceeding.

This we concede fully. She lost no rights by virtue of that void proceeding, but on the other hand it must be conceded that she gained no new rights.

* * * * * * * * * * *

To avoid the statute of limitations, counsel suggests the absence of the appellee from the State of Mississippi.

This did not stop the running of the statute of limitations, for the claim never was a personal demand against the appellee. The lands are situated in Mississippi; for years there was no administrator of David J. Field, deceased, in the State, and at any time the heir at law could have been made a party by publication of process. This is clearly explained in the opinion of Judge Hill.

The cases cited by counsel are not at all in point.

In Sledge *v.* Jacobs (58 Miss. 194), the defendant who, was absent from the State, was the obligor and debtor personally bound for the debt.

Such was the case also in Pindell *v.* Harris (57 Miss.); so also in Bowman *v.* Hanshaw (56 Miss.), and Nithes *v.* Bullock (53 Miss. erroneously cited 51 Miss). These cases have not the remotest application to the subject now under inquiry.

* * * * * * * * * *

There was never any settlement of the partnership affairs; but a hostile proceeding against a minor in a court without jurisdiction. There never was an accounting of the affiairs of the partnership antedating the death of David I. Field. Nor between C. I. Field and the administrator E. H. Field, nor by anybody else for the period of ten years between the death of D. I. Field and the probate court proceeding in respect to crops on persnnal property.

It is not pretended in the bill that any accounting was held in the Probate Court.

No person pretended to make any settlement for this appellee, but on the contrary the opposite thing was done in bringing an adversary proceeding against his property, in which he stood in hostility to the administrator of C. I. Field, as well as to the administrator of David I. Field, deceased.

E. H. Field's resignation as administrator can not excuse the laches of complainant or his ancestor; an administrator

can not resign without a full administration and all creditors may still treat him as administrator notwithstanding such resignation.

43 Miss. 140, Pollock *v.* Brice.

III.

Inasmuch as Judge Hill's opinion is not in the transcript we print that part not included in Mr. Nugent's brief, which is stipulated to be correct:—

OPINION OF JUDGE R. A. HILL, JUDGE OF UNITED STATES DISTRICT COURT, AT OXFORD.

"The questions now for decision arise upon defendant's demurrer to complainant's bill. The allegations of the bill are in substance as follows: In the year 1855, D. I. Field and C. I. Field, brothers, formed a partnership in the cotton planting business, in Bolivar County in this State, each contributing in cash the sum of $18,000. The business was conducted by D. I. Field until December, 1859, when he died, and E. H. Field became his administrator, and conducted the business until after the commencement of the war, when C. I. Field took the slaves to Texas, and kept them until the close of the war, when he returned with them and entered again on the planting business with them; but during all the time he had them in possession nothing was realized by him. The plantation was rented by E. H. Field until he gave up his administration in 1867, when C. I. Field became his successor, and shortly afterwards died. Brutus J. Clay then administered upon the estate of both D. I. and C. I. Field, and leased the plantation from year to year.

"In 1869 he began proceedings to have the estate of D. I. Field declared insolvent, and for the sale of the interest

of D. I. Field in the partnership lands to satisfy an alleged debt due from the firm to C. I. Field, which had been probated by C. I. Field against the estate of D. I. Field in his lifetime, and shortly after the death of D. I. Field; but no other steps were taken for the collection of this alleged indebtedness or settlement of the partnership accounts.

"The alleged indebtedness is alleged to be for advances made in money to C. I. Field in the purchase of lands and slaves for the firm, and evidenced by notes or written memoranda signed by the firm name, supposed to have been executed by D. I. Field, the acting partner, anc delivered to C. I. Field.

"Under the proceedings in the Probate Court the interest of D. I. Field in the partnership land was sold and struck off to Pattie A. Clay, the daughter of C. I. Field, who gave her receipt for the purchase-money, being $6,000, less the costs of the proceeding, which was paid by her, and a deed executed to her by the administrator, Brutus J. Clay, Sr., and under which she went into possession of the whole land, and has remained in possession until the filing of the bill.

"Mrs. Clay is the only heir at law of C. I. Field.

"The sale was made after the adoption of the present constitution and the abolition of the Probate Court, the cause was not removed to the Chancery Court, or any further steps taken to complete or confirm the sale.

"The defendant, Mrs. Freeman, the widow of D. I. Field, has taken steps to have her dower assigned to her out of said lands as the widow of D. I. Field, and has had the same assigned and set off to her, and has also filed her bill in the Chancery Court of Bolivar County for an account of the rents and profits therein. D. I. Field, Jr., the only heir at law of D. I. Field, Sr., has brought his action of ejectment in this court for the interest of his father in the partnership land, subject, as a matter of course, to his mother's dower. Mrs. Freeman's suit has been removed to this court.

The prayer of the bill is to enjoin these suits, and for a decree confirming the sale made under the decree of the Probate Court, or for one-half of the sums so advanced with interest, and the sale of the interest of D. I. Field, Sr., in the land to satisfy said indebtedness.

The demurrer states as grounds therefor, want of equity on the face of the bill, the statute of limitations of three, four, and six years; the *laches* of said C. I. Field, his administrator, and the complainant in asserting the claim and its staleness, that the statements and prayer of the bill are inconsistent, and a defect in the parties to it, etc., etc."

* * * * * * * * * * * *

(Then follows that portion quoted in Mr. Nugent's brief.)

Immediately following the end of the quotation from the opinion in Nugent's brief, add this concluding paragraph of the opinion: —

"But as the question of rents and profits, and a partition "of the lands may be most conveniently and satisfactorily "ascertained and adjusted in this suit, if it is preferred, "the cause may be retained and proceeded with so as to "settle all the rights of the parties.

(Signed) "R. A. HILL, *Judge*."

We call attention to the fact that the complainant declined this offer by the court. (See decree of March 6, 1884, p. 86, Record.)

We respectfully submit that the decree of the District Court should be affirmed.

FRANK JOHNSTON,
J. E. McKEIGHAN,
For Appellees.

118-97

FILED
JAN 3 1896
JAMES H. MCKENNEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

NO. 667, PATTIE A. CLAY, ET ALS., APPELANTS,

VS.

DAVID I. FIELD, ET ALS., APPELLEES.

On Appeal from District Court of the Northern District of Mississippi.

BRIEF IN REPLY BY WILLIAM L. NUGENT, FOR APPELLANTS.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

NO. 667, PATTIE A. CLAY, ET ALS., APPELANTS,

VS.

DAVID I. FIELD, ET ALS., APPELLEES.

On Appeal from District Court of the Northern District of Mississippi.

BRIEF IN REPLY BY WILLIAM L. NUGENT, FOR APPELLANTS.

It is well to observe in the outset, that the revised code of Mississippi, adopted in the year 1880, has no application whatever to this case, and that the prior codes of 1857 and 1871 must be alone considered in respect to the statutes of limitations. Learned counsel, in making the extracts from appellant's bill, ignore the fact that they are made "on advice of counsel," and that the alleged reason for the voidness of the decretal order of the probate court of Bolivar county cannot alter the fact, or injuriously affect the rights of the parties. The matters of law arising on the facts are left for the consideration and judgment of the court, and the question of estoppel does not arise. Under the decisions in Mississippi, all decrees of

the probate courts which did not conform to the statute strictly were void, and all sales under them void. It is not supposed that a void thing could be voider because of a difference in the reasons which occasioned its nullity. Looking at the opinion of this court in the suit at law between the same parties, we are sure the plaintiffs in error would have succeeded had there been an unequivocal satisfaction of the notes held by the administrator of appellant's father. If this be true, it is idle to speak of the probate court proceedings as being a "vain thing." They were of some utility, and must be considered fairly in order to reach a just conclusion in this case. We cannot agree that these proceedings by the probate court must be wholly ignored, or that the substantial equities of the parties can thus be refined away. The proceeding in the probate court of Bolivar county was to sell a half interest in the property for half the debt due by the planting firm to C. I. Field, and there can be no doubt that it was initiated and concluded in the utmost good faith.

It is manifest that the only defense to this suit is the statute of limitations, and if that does not apply, there is an end to the controversy so far as the equities of the appellant are concerned. Now it is quite as important to recall dates as well as to keep in mind the facts of the case. E. H. Field was appointed administrator of D. I. Field, in October, 1859, and the claim of C. I. Field was probated and registered December 12, 1859. C. I. Field died July 18, 1867, and a few months before, succeeded E. H. Field in the administration of the estate of D. I. Field. On the day last stated C. I. Field died, and, shortly afterwards, Brutus J. Clay qualified as administrator of the estates of D. I. and C. I. Field. The statutes of limitation in this state were all suspended by an act of the legislature of Mississippi, approved January 29, 1862. Acts 1861–'62, p. 235. E. H. Field, administrator of D. I. Field, could not have been sued until sometime in July, 1860. Code 1857, p. 456, art. 126. We do not suppose that C. I. Field could have sued the administrator of his deceased partner, in a court of law, on a note given by the partnership, but it may, for the purposes of argument, be conceded that he could have brought a bill in equity against him, in July or August, 1860, for a settlement of the partnership affairs, however much this may have reversed the logical order of things. If the statute of limitations began to run against him as stated it was expressly ar-

rested by the legislature on the 29th of January, 1862, and did not begin again to run until April, 1867. E. H. Field ceased to be administrator of D. I. Field in July, 1867, and C. I. Field succeeded him. It was quite impossible for him to sue himself.

Counsel refer us to the case of Abbott v. McElroy, 10 S. and M., 100, as holding, under existing statutes, that when the statute of limitations began to run it would not be suspended between the death of a party, and the appointment of an administrator of his estate; but they do not refer the court to Branch Bank of Alabama v. Windham, 31 Miss., 320, in which the court say: "It is a well established rule that statutes of limitation commence running only from the time where there is a party capable of being sued;" and to Wood v. Ford 29 Miss. 66; nor to the express declaration of the court in Abbott v. McElroy that the "time allowed by the statute within which an administrator can be sued, has always been held to constitute an exception, because the statutes are construed together;" nor to Whitney v. State, 52 Miss., 739 in which the court say: "The statute of limitations never runs when there is no person in being against whom a suit can be maintained;" nor to the fact that the code of 1857 suspended the statute, in all cases, for time intervening between the death of a party and the appointment of his administrator, and that the same provision appears in the code of 1871, sec. 2162. See

Clayton v. Merritt, 52 Miss., 353;
Boyer v. Francis, 56 Miss., 573.

Two years had, perhaps, run against the firm notes held by C. I. Field when he succeeded E. H. Field, as administrator of the estate of D. I. Field; and about two years and one month when he died, and Brutus J. Clay became *administrator of both estates.* If the statute of six years apply, it is clear that when the proceedings were begun for the sale of the land in the probate court of Bolivar county the bar had not attached at all. This is, we think, a complete answer to the first proposition stated in the brief of opposing counsel. The proceedings for the sale of the land were begun on the 9th day of March, 1868, and the sale was made December 20, 1869. What effect this must have in the determination of the equities of the appellant has already been discussed in our principal brief, and will be adverted to hereafter again.

We think that art. 31, sec. 3, p. 403, of the code of 1857, and section 2175, of the code of 1871, apply to the present case, and they read thus: "And in all other cases not herein provided for, (bills for relief) shall be filed within ten years after the cause thereof shall accrue, and not after; saving, however, to all persons under disability as hereinbefore provided, the like period of time after such disability shall be removed." The appellant attained her majority on the 22d day of November, 1869, and this bill was filed August 10, 1882. She married Brutus J. Clay, Jr., February 20, 1872. Her right of action on the notes arose on the 22d of November, 1869, and not before, and it would, other things being equal, have been barred November 22d, 1879. That she had a right of action is undoubted. On the face of the bill it appears that she is sole distributee of her father's estate, and it was not indebted to any one. She was, therefore, entitled to the notes, and to an action for their recovery. She could not sue at law, but certainly had an equitable remedy. Art. 13, sec. 2 of chap. 57, code of 1857, "an act for the limitation of actions" runs thus: "If, at the time when any cause of action mentioned in this chapter shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor, after such person shall have come into the state; and if, *after any cause of action shall have accrued, the person against whom it has accrued, shall be absent from home and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the comment of the action.*" See sec. 2157, code of 1871 to the same effect.

The language of the statute of Mississippi is very broad: when *any* cause of action mentioned in this chapter shall accrue against *any* person, and the very limitation pleaded in this case arises under that chapter. If it were not so there would be no limitation whatever to the appellant's right to sue. See

Kennard v. Alston, 62 Miss., 765;
Withers v. Bullock, 53 Miss., 541.

Applying this statute, as construed by the supreme court of Mississippi, to the case at bar, it would seem that there can be no difficulty in determining the question arising upon the limitation pleaded; and we are sure that if the right to sue is not cut off by limitation the mere

lapse of time cannot defeat it. Westbrook v. Munger, 61 Miss., 336. If we concede that C. I. Field had a complete right of action in September, 1859, that right was not barred at the time of his death, nor when the proceedings were begun in the probate court of Bolivar county for the sale of his brother's interest in the Content plantation, as we have shown. It was a clear, distinct, substantive right of action when Brutus J. Clay was appointed and qualified as administrator of both estates; and so continued to be up to the time of his resignation or discharge. Counsel rely upon sec. 2694, code of 1880, as cutting off the rights of appellant, see brief, p. 15, but that section was then, for the first time, incorporated into our code, and the rule prior to that time was directly opposed to it.

Champion v. Cayce, 54 Miss., 695;
Parmlee v. McGinty, 52 Miss., 475;
Bacon v. Gray, 23 Miss., 140;
Pearson v. McMillan, 37 Miss., 588.

It is quite clear that when the administrator of both estates resigned or was discharged, there was still a complete right of action in the appellant, who was a minor and not bound by the limitation laws of the state. She did not attain her majority until 1869, and even if the administrator were barred she was not. Her rights could not, under existing laws, be prejudiced by any mistake on the part of her trustee, and the change in our laws, wrought by the code of 1880, could not retroactively defeat such rights. Standing upon the law as it was prior to 1880, and the absence from the state and residence in Missouri of D. I. Field taking the case out of the operation of the statute, it would seem that there is no impediment in the way of our recovery. In this state a person *against* whom a cause of action exists, cannot, under a plea of the statute of limitations, have the advantage of any time during which he was out of the state, but the time of such absence shall not be computed.

Fisher v. Fisher, 43 Miss., 212;
Trotter v. Erwin, 27 Miss., 772.

Courts of equity, equally with courts of law, are within the words of the Mississippi statutes of limitation and the doctrines of that court, which, in the absence of statutory enactments, defeat rights because of great delays, unaccounted for, do not apply in that state. It is conceded that laches and neglect are discountenanced by courts of

chancery, but never at the expense of conscience and good faith. A candid consideration of the facts of this case cannot justify the conclusion reached by counsel. The result of all the proceedings up to the present is, that the appellant loses her large demand, and pays to the appellees a larger sum than the value of their interest in the plantation, besides losing the land she believed had been fairly acquired, and which she had cultivated at large loss to herself. The delay is rationally accounted for. Under the conviction that she had acquired her uncle's half interest in the property through the probate court proceedings, conducted by the kinsmen of both parties, she was content to let the matter rest at that. There is nothing in the case tending to show that there is any loss of evidence, or that the appellees will be placed in a disadvantageous position. Lucy Freeman is the only living party cognizant of the facts, and the appellant will be compelled to rely upon her evidence in the further proceedings, should the decree of the court below be reversed. These things considered, the objection of *staleness* loses its force, especially in view of the fact that its application works out a monstrous wrong.

We recur to the question as to whether the proceedings in the probate court should be considered in reaching a conclusion in this case. We think the case of Hendricks v. Pugh, 57 Miss., 157, in our favor, nor can we concede the assertion that the probate court of Bolivar county, on the application of the administrator of D. I. Field to sell the lands, was wholly without authority to act. It was competent for such administrator, who knew all the facts, to take this course, and fully as competent for the administrator of C. I. Field to acquiesce in it. When the same person represented both estates, and took this course, in the absence of fraud, it looks to us as being judicious and certainly advantageous to the widow of D. I. Field. We cannot get rid of these proceedings as potential factors in the solution of the controversy between the parties, and certainly ought not to disregard them. If there be no such thing as a statutory bar to appellant's rights, there can be no conscionable answer to her appeals for redress. It is true that the probate court had no jurisdiction to settle the accounts of the partnership; but if the firm debt to C. I. Field were the only debt unpaid, and this fact was recognized by the representative of both estates, the probate could exercise jurisdiction. Granting that, the cases

we have cited are applicable, the reasoning of the court in Weaver v. Norwood, 59 Miss., 677, *et seq.*, fully sustains our position; nor does the idea that our debt was not legally paid alter the situation in a court of equity. In Sivley v. Summers, 57 Miss., 712, the sale was void because the administrator was, by law, under such disability as precluded him from buying. He had receipted for his share of the purchase money as one of the creditors of the estate, and the *status quo*, the court said, ought to be restored as far as it was practicable. So in Chillicot v. Parks, 58 Miss., 528. Counsel affect surprise that we quote these cases again after the judgment of this court in the suit at law between the parties; but the fact is that they were *both proceedings in chancery to charge the lands with the amount of the bid made by a purchaser at a void probate sale.* These decisions were referred to in the law case to show that the absolute payment of the purchase money in dollars and cents was not necessary as a basis for the plea of the one year's statute then relied upon, though that precise question was not involved in them. They are now relied upon as entitling us to equitable relief. Counsel insist that appellant's debt is barred by the statute of limitations, and if this contention be admitted it is quite clear that, but for the probate court proceeding, it never would have been. If it is barred, it is to all intents and purposes paid. The appellant was not a mover in the proceeding to sell her uncle's interest in the Content plantation; that was done by the administrator of her father's estate. As we understand the opinion of this court in the case at law between the parties, we were denied relief because the facts did not show a payment of the debt due appellant's father's estate by the estate of her uncle, and that was a condition precedent to pleading the one year statute. But this is a case in equity, and the probate sale was void. In Miller v. Palmer, 55 Miss., 323, the question was, whether, after suffering judgment to go against him *nil dicit*, the purchaser of the property at a void probate sale, could enjoin its enforcement; and he was relieved, as we understand the case, because, in good faith, he relied upon the validity of the proceedings, and had no notice of the defects in his title. In a court of equity the fact that the payment of the bid could not have been coerced, because the sale conferred no title, cannot be invoked as a reason for denying relief in equity. The debt was practically paid by the sale; it was regarded by all parties as

having been paid; the appellant acted upon that assumption and paid the costs of the proceeding upon the idea that she had a good title. She is without remedy in any other court than this; she cannot, in a state court, arrest the execution of the judgment against her in the action at law. We think, therefore, that our bill is maintainable; and if there was a mistake in its structure, the appellant should have had leave to amend. It may, also, be remarked, that the bill alleges that a credit for the purchase money was endorsed upon the notes of the appellant, and, in this respect, meets the decision of this court in the case at law, as we understand it.

The learned district judge held that the absence from the state of the appellees did not arrest the running of the statute of limitations of Mississippi, because the claim was not a personal demand against them. The statute is not so restricted,—it reads: "*any* cause of action," in law or equity mentioned in the code chapter; "against *any* person." It goes without the saying that appellant had a cause of action which accrued to her on the death of her father against appellees. It was not their personal obligation or a demand against them personally, but it was a cause of action which must of necessity be asserted against them as owners of the property. Appellant's father owed no debts whatever. It is true that the laws of Mississippi authorize publication against non-residents of the state; but decrees in such case are not *final and conclusive, and this statute is part of the same Code which contains the chapter on limitations of actions.* Code of Mississippi, 1857, section 6, chapter 62, pages 545 and 546; Code of 1871, sections 1013, and 1071; Code 1880, sections 1885, 1859 and 1860. The Supreme Court of Mississippi did not think this law as to publications was in the way of enforcing a vendor's lien against a non-resident long after the lapse of the period of limitation ordinarily applicable to this class of cases. 62 Miss., 765; 58 Miss., 195; 57 Miss., 739.

Anding v. Davis, 38 Miss., 574, is very applicable to the facts of this case in respect to the right of the appellant to sue for the collection of the notes set out in the bill, and the suspension of the statute of limitations during her minority. We refer the court specially to pages 596 to 599 of the report. These were no debts of C. I. Field, and hence no necessity for the appointment of an administrator. The appellant had the right to sue for the recovery of the notes as soon as she attained her majority.

Wood v. Ford, 29 Miss., 65;
Manly v. Kidd, 33 Miss., 141;
Hill v. Byland, 40 Miss., 618;
Moody v. Harper, 38 Miss., 599;
Robb v. Griffin, 26 Miss., 579.

We press this case because of its equities and the great injury that has been suffered by the appellant; and we feel sure that she is entitled to relief unless the statute of limitations presents an insuperable barrier to her recovery. Without any fault on her part she is called upon to surrender the land she had fairly, as she supposed, purchased, and to pay to the appellees more than its value in rents. If, with this, she is without remedy, because of her bid for and purchasing the land in payment of her debt, the case is "hard, hard indeed."

WILLIAM L. NUGENT,
For Appellant.